No. 84-277

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE BOARD OF TRUSTEES OF THE VILLAGE OF SCARSDALE and THE VILLAGE OF SCARSDALE,

Petitioners,

—v.—

KATHLEEN S. MCCREARY, DAVID DRABKIN, ANN F. CAWLEY, ANGELINA J. MESSENGER, EDWARD R. NAPOLITANO, CHARLES E. BUTLER, JOHN D. HAWKINS, NANCY G. STEGAR, RICHARD CACCIATO, CAROL ANN PASCAL, MARY T. THOMPSON AND GREGORY DE SOUSA

and

THE SCARSDALE CRECHE COMMITTEE, PATRICIA CURRAN, CYNTHIA BARSUHN, GRACE FELLOWS, DORIS ADLER, MARY TULLY, JOAN MANN AND MARIA PEDULLA,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

MARVIN E. FRANKEL
(Counsel of Record)
KRAMER, LEVIN, NESSEN, KAMIN & FRANKEL
919 Third Avenue
New York, New York 10022
(212) 715-9100
Counsel for Petitioners

MARVIN SCHWARTZ
(Counsel of Record)
125 Broad Street
New York, New York 10004
(212) 558-4000
Counsel for Respondents The Scarsdale Creche Committee, et al.

VINCENT K. GILMORE
(Counsel of Record)
25 Broadway
New York, New York 10004
(212) 344-8480
Counsel for Respondents McCreary, et al.

Petition for Certiorari Filed August 17, 1984
Certiorari Granted October 15, 1984

31880

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DOCKET ENTRIES

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

83 Civ. 0987
83 Civ. 3266

KATHLEEN S. MCCREARY, DAVID DRABKIN, ANN F. CAWLEY, ANGELINA J. MESSENGER, EDWARD R. NAPOLITANO, CHARLES E. BUTLER, JOHN D. HAWKINS, NANCY G. STEGAR, RICHARD CACCIATO, CAROL ANN PASCAL, MARY T. THOMPSON AND GREGORY DESOUSA

Plaintiffs,

-against-

JEAN STONE, ELISABETH M. BROWN, EDWARD FALKENBERG, BEATRICE K. UNDERWEISER, THE BOARD OF TRUSTEES OF THE VILLAGE OF SCARSDALE AND THE VILLAGE OF SCARSDALE,

Defendants.

THE SCARSDALE CRECHE COMMITTEE, PATRICIA CURRAN, CYNTHIA BARSUHN, GRACE FELLOWS, DORIS ADLER, MARY TULLY, JOAN MANN AND MARIA PEDULLA,

Plaintiff,

-against-

THE VILLAGE OF SCARSDALE AND THE BOARD OF TRUSTEES OF THE VILLAGE OF SCARSDALE,

Defendants.

Date	NR.	Proceedings
1983		
2-7	1	Filed COMPLAINT and issued summons and notice pursuant to 28 USC 636 (c) in McCreary, et al. v. Stone, et al.
3-31	7	Filed ANSWER of defendants Stone, et al.
4-28	—	Filed Complaint—Issued Summons & Notice in Scarsdale Creche Committee, et al. v. The Village of Scarsdale, et al.
5-27	—	Filed Answer of defts Village of Scarsdale and Board of Trustees of the Village of Scarsdale
6-15	14	Filed stip and order consolidating 83 Civ. 3266 and 83 Civ. 0987 for all purposes.
7-13	24-29	Filed appendix to stipulated facts, Volumes 1 through 6.
7-14	31	Filed the parties stipulated facts.
12-8	37	Filed Opinion No. 55491 the Judgment is for defendants in all respects—Stewart, J. m/n.
12-15	38	Filed Judgment ordered that this consolidated action be dismissed.
1984		
2-19	39	Filed plaintiffs McCreary, et al. notice of appeal to the United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
83-9052

Date	Proceedings
1984	
6-21	Judgment reversed, published opinion filed
8-27	Mandate issued (Judgment, Opinion and Statement of Costs)
10-17	Order granting petition for a writ of certiorari filed

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATHLEEN S. McCREARY, DAVID DRABKIN, ANN F. CAWLEY, ANGELINA J. MESSINGER, EDWARD R. NAPOLITANO, CHARLES E. BUTLER, JOHN D. HAWKINS, NANCY G. STEGER, RICHARD CACCIATO, CAROL ANN PASCAL, MARY T. THOMPSON AND GREGORY DE SOUSA,
Plaintiffs,

—v.—

JEAN STONE, ELIZABETH M. BROWN, EDWARD FALKENBERG, BEATRICE K. UNDERWEISER, THE BOARD OF TRUSTEES OF THE VILLAGE OF SCARSDALE, AND THE VILLAGE OF SCARSDALE,
Defendants.

The Plaintiffs, by their attorneys, complain of the Defendants and allege upon information and belief that:

1. This Court has jurisdiction over this action under Title 28, United States Code, Section 1331 and Section 1343(3).

2. The acts and conduct alleged in this Complaint occurred and will occur within the Southern District of New York.

3. As a result of the acts and conduct alleged in this Complaint, the Plaintiffs seek redress under Title 42, United States Code, Section 1983 for the deprivation by the Defendants under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges or immunities secured by the Constitution and laws of the United States.

4. The rights, privileges or immunities which have been deprived from the Plaintiffs are the freedom of speech and the

free exercise of religion which are protected by the First and Fourteenth Amendments to the Constitution of the United State.

5. This is an action for preliminary and permanent injunction enjoining the Defendants, and each of them, their agents, employees and successors and all persons in active concert and participation with them from continuing a policy, practice, custom or usage of denying residents of the Village of Scarsdale, New York, access to and temporary use of an open and public forum in the Village solely on account of the content, nature and purpose of the expected speech or expression by such residents and its deemed communicative impact.

6. This is also an action for a declaratory judgment under Title 28, United States Code, Sections 2201 and 2202 for the purpose of determining the following questions in actual controversy between the parties.

(a) Whether the Defendants may adopt and continue to enforce any ordinance, regulation, policy, custom or usage of prohibiting access to and temporary use by residents of the Village of Scarsdale, New York, of an open and public forum in the Village under their jurisdiction, management and control on the basis of the content, nature and purpose of speech or expression expected to be professed thereon and its deemed communicative impact.

(b) Whether the Defendants may deny the Plaintiffs access to and temporary use of Boniface Circle, a Village-owned park land in Scarsdale, New York, for the purpose of placing, without public expense or support, a display contributing to the celebration and message of the "Christmas" holiday.

7. This is also an action to recover damages resulting from Defendants' denial of the rights, privileges or immunities of freedom of speech and free exercise of religion of certain Plaintiffs which are civil and constitutional rights protected by the laws of the United States.

8. The Plaintiffs are Kathleen S. McCreary, David Drabkin, Ann F. Cawley, Angelina J. Messinger, Edward R. Napolitano, Charles E. Butler, John D. Hawkins, Nancy G. Steger, Richard Cacciato, Carol Ann Pascal, Mary T. Thom-

pson and Gregory de Sousa. Each Plaintiff is a citizen of the United States and a resident of the Village of Scarsdale, New York. The real property owned by each Plaintiff or a spouse is taxed by the Village of Scarsdale for the purpose of supporting parks, streets and other public forums which are under the jurisdiction, management and control of the Defendants.

9. The Defendants are: Jean Stone, individually and as Mayor and Trustee of the Village of Scarsdale; Elizabeth M. Brown, Edward Falkenberg and Beatrice K. Underweiser, each individually and as Trustee of the Village of Scarsdale; the Board of Trustees of the Village of Scarsdale, the individual members and the collective governing body; and the Village of Scarsdale, a Municipal corporation sited in the County of Westchester, State of New York. The Defendants have under their jurisdiction, management and control the parks, streets and other public forums located in the Village of Scarsdale, including Boniface Circle, a Village-owned park land.

10. For many years, the Board of Trustees of the Village of Scarsdale and the Village of Scarsdale have permitted, upon application, free access to the residents of the Village, individually and in groups, to Village parks, streets and other public forums in order for such residents to assemble, speak and express ideas and to place displays of an artistic or symbolic nature in or on such forums.

11. For many years, including 1982, the Village of Scarsdale has permitted the local Chamber of Commerce to place multi-colored lights and other symbolic decorations lining the several streets comprising the business district of the Village, commencing around December 1 of each year and extending through the beginning of the following year. This custom and practice is consistent with displays in communities throughout the United States where parks, streets and other public facilities are similarly decorated, and in particular around December 25, an official holiday in the United States and the State of New York known as "Christmas".

12. For many years, including 1982, the Village of Scarsdale, upon application, has permitted a group of its residents

access to and use of the steps of the Village Hall or Boniface Circle, a Village-owned park land centrally located amid the lights and other decorations referred to in the preceding paragraph, for the purpose of celebrating "Christmas" by speech, verse and song, including speech, verse and song honoring the birth of Jesus Christ of Nazareth, the occasion and namesake for the official holiday known as "Christmas". In recent years, the dramatic arrival of "Santa Claus" or "Saint Nicholas"[1] on one of the fire trucks of the Village of Scarsdale has been a feature of this celebration.

13. Each year since 1958 until 1981, the Board of Trustees of the Village of Scarsdale has permitted, upon application, the Scarsdale Creche Committee or its predecessors to place a Nativity Scene or Creche[2] on Boniface Circle during the period commencing shortly before and ending shortly after "Christmas". The Scarsdale Creche Committee, an association composed of representatives of several churches in the Village of Scarsdale, owns this Creche. Each year from 1958 until 1981, this Creche has been erected and maintained on and removed from Boniface Circle by the Committee without public expense or support. Commencing with the 1976 Christmas season, in compliance with a resolution of the Board of Trustees, the Committee affixed a sign to their Creche display on Boniface Circle stating that it was "erected and maintained by the Scarsdale Creche Committee, a private organization".

14. On December 10, 1981, in response to the customary application of the Scarsdale Creche Committee, the Board of Trustees of the Village of Scarsdale by a 4-3 vote denied the Committee access to and use of Boniface Circle for the purpose of erecting and maintaining their Creche during the 1981 Christmas season.

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1 A fourth century Christian Bishop of Myra, Asia Minor and patron saint of children who is recognized in many countries in stylized fashion as the religious and holiday spirit of Christmas personified.

2 A display composed of approximately half-life size figures of five adult persons and a child portraying the birth of Jesus Christ of Nazareth at Bethlehem.

15. On December 1, 1982, Defendants Stone, Brown, Falkenberg and Underweiser and the other members of the Board of Trustees of the Village of Scarsdale considered the customary application from the Scarsdale Creche Committee seeking permission to place their Creche on Boniface Circle during the 1982 Christmas season. The application was formally put to the Board of Trustees by a resolution that the application of the Committee to place the Creche on Boniface Circle be approved by the Board. By a 4-3 vote, and specifically by the negative votes of Defendants Stone, Brown, Falkenberg and Underweiser, the resolution was defeated.

16. On December 14, 1982, Defendants Stone, Brown, Falkenberg and Underweiser and the other members of the Board of Trustees of the Village of Scarsdale considered an application dated December 7, 1982 from Plaintiffs McCreary, Messinger, Napolitano and Cacciato and 13 other residents of the Village of Scarsdale seeking permission from the Board of Trustees to place a Nativity Scene or Creche on Boniface Circle during the 1982 Christmas season. The application of these Plaintiffs and statements to the Board of Trustees represented that the display was small and tasteful, privately owned, and would be erected, maintained and removed without any public expense or support, and that a notation would be placed on the display indicating that the display was made by private citizens and that the Village of Scarsdale did not support or sponsor the display. These Plaintiffs also represented in their application that the purpose of the display of their Creche was to celebrate and express religious convictions. After oral discussion on December 14, 1982, the application of these Plaintiffs was formally put to the Board by a resolution that the Board give permission to their application to place a Creche on Boniface Circle for the holiday season. By a 4-3 vote, and specifically by the negative votes of Defendants Stone, Brown, Falkenberg and Underweiser, and resolution was defeated.

17. The Village of Scarsdale has no ordinance, rule or regulation of specific application governing access to and use of Boniface Circle. The application of the Plaintiffs referred to

in the preceding paragraph was arbitrarily denied by Defendants Stone, Brown, Falkenberg and Underweiser, and by virtue of their action, the Board of Trustees of the Village of Scarsdale and the Village of Scarsdale. The denial by these individually named Defendants was based on the content, nature and purpose of the symbolic display and message of the Creche and its deemed communicative impact. Such denial was an invalid prior restraint on the freedoms of speech and religion of these Plaintiffs, and deprived them of rights, privileges or immunities protected by the Constitution of the United States.

18. The Plaintiffs by memorandum dated February 3, 1983 have requested that the Board of Trustees of the Village of Scarsdale consider their application for permission to erect and maintain a Nativity Scene or Creche on Boniface Circle during the 1983 Christmas season. This application represents to the Board of Trustees that the display is small and tasteful, privately owned, and will be erected, maintained and removed without any public expense or support, and that a notation will be placed on the display indicating that the display is made by private citizens and that the Village of Scarsdale does not support or sponsor the display. The Plaintiffs also represent in this application that among the purposes of the display of the Creche are their desires to join in the Village's celebration of "Christmas" by giving recognition to the birth of Jesus Christ, the occasion and namesake of the holiday, and to celebrate and express religious convictions.

19. In view of the pattern of recent denials described in this Complaint, Defendants Stone, Brown, Falkenberg and Underweiser, the Board of Trustees of the Village of Scarsdale and their agents, employees and successors, unless enjoined by this Court, will in violation of the laws of the United States deny the application described in the preceding paragraph and future similar applications made by the Scarsdale Creche Committee and/or residents of the Village of Scarsdale.

20. Acting under color of authority conferred upon them under the laws of the State of New York and the ordinances of the Village of Scarsdale, Defendants Stone, Brown, Falk-

enberg and Underweiser and the Board of Trustees have adopted and are presently pursuing a policy, practice, custom or usage of prohibiting access to and use of Boniface Circle, an open and public forum in the Village of Scarsdale, on the basis of the content, nature and purpose of speech and expression expected to be professed thereon and its deemed communicative impact, and of openly curtailing religious expression. As described in this Complaint, the Plaintiffs have been denied and will be denied access to and use of Boniface Circle solely on account of the content, nature and purpose of their expected speech and expression and its deemed communicative impact. In making such denials, the Defendants were and will be depriving the Plaintiffs of rights, privileges or immunities secured by the First and Fourteenth Amendments of the Constitution of the United States.

21. Enforcement by the Defendants and their agents, employees and successors of the policy, practice, custom or usage pursuant to which the Plaintiffs were and will be denied access and temporary use of an open and public forum solely on account of the content, nature and purpose of speech and expression expected to be professed thereon and its deemed communicative impact, has resulted in and will result in irreparable injury to the Plaintiffs, by the deprivation of civil and constitutional rights protected under the laws of the United States.

22. The Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs request that this Court:

A. Issue a preliminary and permanent injunction enjoining the Defendants and each of them, their agents, employees and successors and all persons in active concert and participation with them (i) from governing, supervising and operating open and public forums in the Village of Scarsdale in a manner which denies access to and use of same to the residents of the Village of Scarsdale solely on account of the content, nature and purpose of speech or expression expected to be professed in or on such forums, (ii) from adopting and enforcing any ordinance, regulation, policy, practice, custom or usage which restricts and/or limits Plaintiffs as to their rights and privileges

of access to and use of such forums for the purpose of exercising the freedoms of speech and religion, and (iii) from denying Plaintiffs the right of access to and temporary use of Boniface Circle, solely on account of the content, nature and purpose of the speech or expression expected to be professed thereon and its deemed communicative impact;

B. Make a declaration of the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declaration shall have the force and effect of a final judgment;

C. Award damages to certain Plaintiffs for past deprivation of civil and constitutional rights;

D. Grant to the Plaintiffs such other additional or alternative relief as the Court may deem necessary and appropriate; and

E. Grant to the Plaintiffs their costs, expenses and attorneys' fees in this action.

Vincent K. Gilmore

Michael J. Murphy

Attorneys for Plaintiffs
25 Broadway
New York, NY 10004

ANSWER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

Defendants Jean Stone, Elisabeth M. Brown, Edward Falkenberg, Beatrice K. Underweiser, The Board of Trustees of the Village of Scarsdale and the Village of Scarsdale, by their attorneys, Siff & Newman, P.C. and Kramer, Levin, Nessen, Kamin & Frankel, as and for their answer to the complaint allege upon information and belief as follows:

1. Neither admit nor deny the allegations contained in paragraph 1, since these allegations state conclusions of law.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2, except admit that the acts alleged in the complaint occurred within the Southern District of New York.

3. Deny the allegations contained in paragraph 3.

4. Deny the allegations contained in paragraph 4.

5. Deny the allegations contained in paragraph 5, except admit that this is an action for a preliminary and permanent injunction.

6. Deny the allegations contained in paragraph 6, except admit that this is an action for a declaratory judgment.

7. Deny the allegations contained in paragraph 7, except admit that an award of damages is sought in this action.

8. Admit the allegations contained in paragraph 8.

9. Admit so much of paragraph 9 as alleges that Defendants Edward Falkenberg and Beatrice K. Underweiser are Trustees of the Village of Scarsdale, that Elisabeth M. Brown was a Trustee of the Village of Scarsdale and that Jean Stone was Mayor and Trustee of the Village of Scarsdale, that they acted collectively with other Trustees, not named as defendants herein, as the Board of Trustees of the Village of Scarsdale, that the Village of Scarsdale is a municipal corporation sited in the County of Westchester, State of New York and that the streets and parks and other public properties located in the

Village of Scarsdale, including Boniface Circle, are under the jurisdiction, management and control of the Village of Scarsdale of which the Board of Trustees is the governing body. Defendants deny that the Trustees and Mayor acted other than in their official capacities as members of the Board of Trustees of the Village of Scarsdale, and otherwise deny the allegations in paragraph 9.

10. Deny the allegations in paragraph 10, except admit that the Village of Scarsdale and its Board of Trustees have permitted, upon application, access to Village parks and streets for various lawful requested purposes.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11, except admit that the Village of Scarsdale has permitted the placement of lights and decorations in the business district of Scarsdale commencing around December 1 of each year and extending through the beginning of the following year, and on information and belief admit that other communities in the United States follow similar practices.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12, except admit that the Village of Scarsdale has not objected to the use of public property for the purpose of a Christmas carol sing one afternoon or evening before Christmas and that in some years the arrival of "Santa Claus" or "Saint Nicholas" on one of the fire trucks of the Village of Scarsdale has been a feature of this event.

13. Deny the allegations contained in paragraph 13, except admit that from at least 1958 until 1981 the Board of Trustees of the Village of Scarsdale have permitted, upon application, a creche to be placed on Boniface Circle during December and January, that the creche has been erected, maintained and removed from Boniface Circle by the Scarsdale Creche Committee, that commencing with the 1976 Christmas season a sign was affixed to the creche display stating that it was "erected and maintained by the Scarsdale Creche Committee, a private organization."

14. Admit the allegations contained in paragraph 14.

15. Admit that allegations contained in paragraph 15.
16. Admit the allegations contained in paragraph 16.
17. Deny the allegations contained in paragraph 17.
18. Admit the allegations contained in paragraph 18.
19. Deny the allegations contained in paragraph 19.
20. Deny the allegations contained in paragraph 20.
21. Deny the allegations contained in paragraph 21.
22. Deny the allegations contained in paragraph 22.

FIRST DEFENSE

23. The complaint fails to state a claim upon which relief may be granted against the defendants.

SECOND DEFENSE

24. The granting of permission by the defendants to the plaintiffs to place a creche on Boniface Circle in order to give recognition to the birth of Jesus Christ and to celebrate and express religious convictions would have been in violation of the First and Fourteenth Amendments to the Constitution of the United States in that such action by the defendants would not reflect a clearly secular purpose and would have constituted the use of public property in support of religion and for religious purposes.

THIRD DEFENSE

25. The granting of permission by the defendants to the plaintiffs to place a creche on Boniface Circle in order to give recognition to the birth of Jesus Christ and to celebrate and express religious convictions would have been in violation of the First and Fourteenth Amendments to the Constitution of the United States in that said action by the defendants would have had the impermissible effect of advancing religion and would have constituted the use of public property in support of religion and for religious purposes.

FOURTH DEFENSE

26. The granting of permission by the defendants to the plaintiffs to place a creche on Boniface Circle in order to give recognition to the birth of Jesus Christ and to celebrate and express religious convictions would have been in violation of the First and Fourteenth Amendments to the constitution of the United States in that such action by the defendants would have constituted excessive government entanglement with religion.

FIFTH DEFENSE

27. Defendants Elisabeth M. Brown, Edward Falkenberg, and Beatrice K. Underweiser were duly elected as Trustees on the Board of Trustees of the Village of Scarsdale. Defendant Jean Stone was duly elected Mayor of the Village of Scarsdale and a Trustee on the Board of Trustees of the Village of Scarsdale.

28. On April 4, 1983 defendants Stone and Brown will cease to be Mayor and Trustees of the Village of Scarsdale.

29. The actions alleged in the complaint to have been taken by defendants Stone, Brown, Falkenberg and Underweiser with respect to the applications for placement of a creche on Boniface Circle were exclusively in their official capacities as Trustees of the Village of Scarsdale.

30. The Board of Trustees of the Village of Scarsdale has under its juisdiction the management and control of all public property located in the Village of Scarsdale.

31. Determining whether or not to permit any particular use of public property within the Village of Scarsdale is a discretionary function of the Board of Trustees.

32. Defendants Stone, Brown, Falkenberg, Underweiser and the other members of the Board of Trustees acted in good faith in all actions taken by them as Trustees relating to the use of Boniface Circle.

33. Defendants Stone, Brown, Falkenberg and Underweiser, and the other members of the Board of Trustees, as public officials who exercised their discretion in good faith in denying applications for the placement of a creche on Boniface

Circle, a public property in the Village of Scarsdale, are immune from personal liability for damages due to any alleged violation of plaintiffs' rights under 42 U.S.C. Section 1983.

Wherefore the Court is respectfully requested to:

(1) dismiss the complaint in its entirety as to the defendants Stone and Brown;

(2) dismiss the complaint insofar as it requests damages and injunctive relief against the defendants Underweiser, Falkenberg, the Board of Trustees of the Village of Scarsdale and the Village of Scarsdale;

(3) issue a judgment declaring (i) that the denial by the Board of Trustees of the Village of Scarsdale of plaintiffs' applications to erect a creche at Boniface Circle was not in violation of the Constitution of the United States or any other law, and (ii) that approval by the Board of Trustees of the Village of Scarsdale of plaintiffs' applications to erect a creche at Boniface Circle would have violated the First and Fourteenth Amendments of the Constitution of the United States;

(4) grant defendants such other relief as the Court may deem appropriate; and

(5) award defendants their costs, disbursements and attorneys' fees in this action.

Dated: New York, New York
March 30, 1983

SIFF & NEWMAN, P.C.

By:_____

233 Broadway
New York, New York 10279
(212) 349-3990

KRAMER, LEVIN, NESSEN,
KAMIN & FRANKEL

By:_____

919 Third Avenue
New York, New York 10022
(212) 715-9100

Attorneys for Defendants

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE SCARSDALE CRECHE COMMITTEE, PATRICIA CURRAN, CYNTHIA BARSUHN, GRACE FELLOWS, DORIS ADLER, MARY TULLY, JOAN MANN AND MARIA PEDULA

Plaintiffs,

-against-

THE VILLAGE OF SCARSDALE AND THE BOARD OF TRUSTEES OF THE VILLAGE OF SCARSDALE

Defendants.

Plaintiffs, by their attorneys, complain of Defendants and allege as follows:

1. This action is brought pursuant to Title 28, United States Code, Section 2201, and Title 42, United States Code, Section 1983, for the purpose of having declared unconstitutional, and to enjoin Defendants' continued enforcement of, and official policy, practice, custom or usage of excluding Plaintiffs from an open and public forum located in the center of the Village of Scarsdale solely on the basis of the content of Plaintiffs' anticipated speech and religious expression in that forum.

2. This Court has jurisdiction over this action pursuant to Title 28, United States Code, Section 1331, this being a civil action arising under the Constitution, laws or treaties of the United States, and pursuant to Title 28, United States Code, Section 1343(3), this being a suit in equity which is authorized by Title 42, United States Code, Section 1983, to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Constitution and laws of the United States. The

rights, privileges or immunities Plaintiffs seek to redress are the rights to freedom of speech, free exercise of religion and equal protection guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

3. Venue is proper pursuant to Title 28, United States Code, Section 1391(b) in that this is a civil action wherein jurisdiction is not founded solely upon diversity of citizenship, the claim arose in this judicial district and all Defendants reside in this district.

4. Plaintiff The Scarsdale Creche Committee (the "Committee") is a private unincorporated association of Protestant and Catholic churches located in the Scarsdale-Eastchester area. The Committee was formed in 1957 for the purpose of commissioning the sculpting of a wood-carved creche to be displayed in the Village of Scarsdale during the Christmas holiday seasons. The parishioners of seven churches presently comprise the membership of the Committee. These seven churches are Immaculate Heart of Mary, Trinity Lutheran, Church of the Good Shepherd, Grace Lutheran, Church of St. Pius, Scarsdale Community Baptist and Our Lady of Fatima. The parishioners of each church contribute approximately $25 annually to the Committee to defray the costs of displaying and maintaining the creche. Plaintiffs Curran, Barsuhn, Fellows, Adler, Tully, Mann and Pedulla are citizens of the United States and all but Plaintiffs Mann and Pedulla are residents of the Village of Scarsdale. Plaintiffs Curran, Barsuhn, Fellows, Adler, Tully, Mann and Pedulla serve on the Committee as representatives of the seven churches. Plaintiff Curran serves as Chairman of the Committee.

5. Defendants are the Village of Scarsdale (the "Village"), a municipal corporation located in the County of Westchester, State of New York, and the Board of Trustees of the Village (the "Board of Trustees" or the "Board"). Defendants have under their exclusive control and supervision the parks, streets, grounds and other public facilities located in the Village, including Boniface Circle, a Village-owned park or village green located in the center of the Village.

6. Upon information and belief, there are no statutes, laws, ordinances or rules in effect in the Village which prohibit or specifically regulate access to or use of public parks, streets, common grounds or other Village facilities. For many years Defendants have followed a policy, custom, practice or usage of permitting open access to these public areas. Defendants have accepted and have freely granted applications from individuals and groups seeking to use these public forums for speeches, meetings, parades, religious expression, placement of artistic or symbolic displays, fundraising, camping, recreation and school-sponsored sales.

7. For many years Defendants have permitted access to and use of several of the streets located in the central business zone of the Village by the local Chamber of Commerce for the purpose of installing and displaying Christmas lights and ornaments. The Chamber of Commerce has been allowed to display these lights and ornaments on Village-owned utility light poles for approximately one month each year, commencing on or about December 1 and ending shortly after January 1 of the following year. The Chamber of Commerce has not been required to seek permission from the Board of Trustees before displaying these lights and ornaments. The cost of the electricity has been borne by the Village and no proof of liability insurance has been required to be furnished by the Chamber of Commerce. No notice of the fact that it is the Chamber of Commerce which installs and displays the lights and ornaments has been required. Upon information and belief, this display of Christmas lights and ornaments is a traditional means by which the Chamber of Commerce celebrates and/or communicates Christmas holiday sentiments.

8. For many years Defendants have permitted access to and use of Davis Park, a Village-owned park land, by the Arthur Manor Community Association for the purpose of installing and displaying Christmas lights and ornaments on a large evergreen tree owned by the Village. The Arthur Manor Community Association has been allowed to display these lights and ornaments for approximately one month each year, commencing on or about December 1 and ending shortly after

January 1 of the following year. The Arthur Manor Community Association has not been required to seek permission from the Board of Trustees before displaying these lights and ornaments. The cost of the electricity has been borne by the Village and no proof of liability insurance has been required to be furnished by the Arthur Manor Community Association. No notice of the fact that it is the Arthur Manor Community Association which installs and displays the lights and ornaments has been required. Upon information and belief, this display of a Christmas tree in Davis Park is a traditional means by which the Arthur Manor Community Association celebrates and/or communicates Christmas holiday sentiments.

9. For many years Defendants have permitted access to and use of the lobby and entrance to Village Hall, the seat of Scarsdale's local government, by Village employees for the purpose of erecting, decorating and displaying Village-owned Christmas trees. Village employees have been allowed to display these trees in Village Hall for approximately one month each year, commencing on or about December 1 and ending shortly after January 1 of the following year. The cost of the electricity has been borne by the Village. Upon information and belief, this display of Christmas trees in Village Hall is a traditional means by which the Village and its employees celebrate and/or communicate Christmas holiday sentiments.

10. For many years Defendants have permitted access to and use of either Boniface Circle or the plaza outside Village Hall by the Town Club, a private group of Scarsdale residents, for the purpose of engaging in a Christmas carol sing. The Town Club's annual repertoire of Christmas carols includes many songs which commemorate the birth of Jesus Christ of Nazareth. Upon information and belief, this annual Christmas carol sing is a traditional means by which the Town Club celebrates and/or communicates Christmas holiday sentiments.

11. For many years Defendants have permitted access to and use of either Chase Park or Boniface Circle by the American Legion, the Red Cross, the United Way, the Boy Scouts of America, the Scarsdale Art Association and the Association of

Foreign Students for such purposes as speechmaking, patriotic celebrations, fundraising, camping, art shows and Halloween pumpkin sales. Upon information and belief, Defendants have permitted these groups to erect and temporarily display podiums, signs, structures, artwork and tents in connection with the above uses of Chase Park and Boniface Circle.

12. From 1957 through 1980 Defendants, upon application, permitted access to and use of Boniface Circle by the Committee for the purpose of erecting and temporarily displaying its wood-carved creche. Defendants allowed the Committee to display its creche each year for approximately a two and one-half week period, commencing on or about December 16 and ending shortly after January 1 of the following year. The Committee never solicited or received any funds, support or sponsorship from the Village or the Board of Trustees in connection with the annual display of its creche. The Committee was always exclusively responsible for the work and costs involved in erecting, displaying and removing the creche, and always furnished proof of liability insurance when requested to do so by the Board of Trustees. The Committee always restored Boniface Circle to its previous condition after the creche was removed.

13. During each Christmas season from 1976 through 1980, in response to and in compliance with a resolution passed by the Board of Trustees in 1976, the Committee prominently displayed a sign beside the creche which stated, "This creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization."

14. On or about November 1, 1981, the Committee submitted an application to the Board of Trustees seeking permission to erect and display its creche in Boniface Circle during the 1981 Christmas holiday season. The application represented that, as in prior years, the Committee would display the sign described in Paragraph 13 above and would be responsible for all work and costs involved in erecting, displaying and removing the creche.

15. On November 10, 1981, the Board of Trustees voted 4-3 to deny the Committee's application. The denial of the

Committee's application by the Board of Trustees was not based upon any statute, ordinance, rule, regulation or standards governing access to or use of Boniface Circle.

16. On October 25, 1982, the Committee submitted an application to the Board of Trustees seeking permission to erect and display its creche in Boniface Circle during the 1982 Christmas holiday season. The application represented that, as in prior years, the Committee would display the sign referred to in Paragraph 13 above and would be responsible for all work and costs involved in erecting, displaying and removing the creche.

17. On December 1, 1982, the Board of Trustees voted 4-3 to deny the Committee's application. The denial of the Committee's application by the Board of Trustees was not based upon any statute, ordinance, rule, regulation or standards governing access to or use of Boniface Circle.

18. The Committee's creche is both a religious symbol and a work of art. By erecting and displaying this creche, the Committee, its members and its representatives have, since 1957, sought to communicate, celebrate and artistically portray the birth of Jesus Christ of Nazareth and to communicate, celebrate and artistically portray ideas of peace, goodwill, love and tolerance among all mankind.

19. Upon information and belief, the Board of Trustees arbitrarily and capriciously denied the applications of the Committee referred to in Paragraphs 14 and 16 above solely on the basis of the content of Plaintiffs' anticipated speech and religious expression in Boniface Circle.

20. The conduct of the Board of Trustees described in Paragraphs 15, 17 and 19 above constituted invalid prior restraints on the rights to freedom of speech and free exercise of religion. By reason of the aforesaid conduct of the Board of Trustees, Defendants denied Plaintiffs their rights to freedom of speech and free exercise of religion, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

21. By reason of Defendants' conduct as described in this Complaint, Defendants unlawfully denied Plaintiffs equal ac-

cess to a public forum, in violation of Plaintiffs' right to equal protection under the Fourteenth Amendment to the Constitution of the United States. Although Defendants have permitted other individuals and groups access to and use of public parks, streets, common grounds and other Village facilities, including Boniface Circle, Defendants have, since November of 1981, unlawfully discriminated against Plaintiffs solely on the basis of the content of Plaintiffs' anticipated speech and religious expression in Boniface Circle.

22. On December 7, 1982, seventeen Village residents collectively submitted an application to the Board of Trustees seeking permission to erect and display a creche in Boniface Circle during the 1982 Christmas holiday season. The application represented that by erecting and displaying a creche, these residents sought to celebrate and express their religious convictions. In their application and in statements made to the Board of Trustees at a meeting held on December 14, 1982, these residents stated that they would be responsible for all work and costs involved in erecting, displaying and removing the creche. They also offered to affix a sign to the creche which would state that the creche was privately owned and that the Village did not support or sponsor its display.

23. On December 14, 1982, the Board of Trustees voted 4-3 to deny these seventeen residents permission to erect and display a creche in Boniface Circle. The denial of these residents' application by the Board of Trustees was not based upon any statute, ordinance, rule, regulation or standards governing access to or use of Boniface Circle.

24. Upon information and belief, the Board of Trustees arbitrarily and capriciously denied the application described in Paragraph 23 above solely on the basis of the content of these residents' anticipated speech and religious expression in Boniface Circle.

25. On April 12, 1983, the Committee submitted an application to the Board of Trustees seeking permission to erect and display its creche in Boniface Circle during the 1983 Christmas holiday season. The application represented that, as in prior years, the Committee would display the sign referred to

in Paragraph 14 above and would be responsible for all work and costs involved in erecting, displaying and removing the creche. The Committee requested that the Board of Trustees consider its application at the board meeting scheduled to be held on April 26, 1983.

26. By letter dated April 21, 1983, the Board of Trustees advised the Committee that in view of the fact that the question of allowing the placement of a creche in Boniface Circle is now the subject of a pending lawsuit, it would not consider the Committee's application "until the progress of the litigation is clearer".

27. By acting under color of state law to deny Plaintiffs and others similarly situated access to and use of Boniface Circle to erect and temporarily display a creche, Defendants have deprived and unless restrained, will continue to deprive Plaintiffs of their rights to freedom of speech, free exercise of religion and equal protection, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

28. The damage and injury done to Plaintiffs by reason of being deprived of the aforesaid rights is continuing and irreparable and Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Adjudge and declare Defendants' policy, practice, custom or usage of denying Plaintiffs access to and use of Boniface Circle solely on the basis of the content of Plaintiffs' anticipated speech and religious expression in that public forum to be in violation of the First and Fourteenth Amendments to the Constitution of the United States; and

2. Issue a preliminary and permanent injunction restraining Defendants, their agents, employees, successors and all persons acting in concert or cooperation with them (a) from denying Plaintiffs access to and use of Boniface Circle solely on the basis of the content of Plaintiffs' anticipated speech and religious expression in that public forum, (b) denying Plaintiffs equal access to and use of Boniface Circle solely on the basis of the content of Plaintiffs' anticipated speech and

religious expression in that public forum and (c) adopting and enforcing any statute, law, ordinance, regulation, policy, practice, custom or usage which prohibits, restricts, limits or unlawfully discriminates against Plaintiffs in the exercise of their rights to freedom of speech and religious expression in public forums in Scarsdale;

3. Grant Plaintiffs against the Village the costs of this action, including reasonable attorneys' fees, pursuant to Title 42, United States Code, Section 1988; and

4. Grant such other and further relief as this Court may deem just and proper.

Dated: New York, New York
April 28,1983

Respectfully submitted,

Marvin Schwartz

Sara Goodman

Attorneys for Plaintiffs
125 Broad Street
New York, New York 10004
(212) 558-4000

ANSWER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

Defendants Village of Scarsdale and Board of Trustees of the Village of Scarsdale, by their attorneys, Siff & Newman, P.C. and Kramer, Levin, Nessen, Kamin & Frankel, as and for their answer to the complaint allege upon information and belief as follows:

1. Neither admit nor deny the allegations contained in paragraph 1 to the extent that these allegations state conclusions of law and deny the remaining allegations contained therein.

2. Neither admit nor deny the allegations contained in paragraph 2 to the extent that these allegations state conclusions of law and deny the remaining allegations contained therein.

3. Neither admit nor deny the allegations contained in paragraph 3 to the extent that these allegations state conclusions of law except admit that the acts alleged in the complaint occurred within the Southern District of New York.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.

5. Deny the allegations contained in paragraph 5 except to admit that defendants are the Village of Scarsdale, a municipal corporation located in Westchester, State of New York, and the Board of Trustees of the Village of Scarsdale, and that the parks and streets and other public properties located in the Village, including Boniface Circle, are under the jurisdiction, management and control of the Village of Scarsdale of which the Board of Trustees is the governing body.

6. Deny the allegations in paragraph 6, except admit that the Village of Scarsdale and its Board of Trustees have permitted, upon application, access to Village parks and streets for various lawful requested purposes.

7. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 that the display of Christmas lights and ornaments is a traditional means by which the Chamber of Commerce celebrates and/or communicates Christmas holiday sentiments and otherwise admit the allegations contained in paragraph 7.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 that the display of a Christmas tree in Davis Park is a traditional means by which the Arthur Manor Community Association celebrates and/or communicates Christmas holiday sentiments and otherwise admit the allegations contained in paragraph 8.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 that the display of a Christmas tree in Village Hall is a traditional means by which the Village and its employees celebrate and/or communicate Christmas holiday sentiments and otherwise admit the allegations in paragraph 9.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10, except admit that the Village of Scarsdale has not objected to the use of public property for the purpose of a Christmas carol sing one afternoon or evening before Christmas.

11. Deny the allegations contained in paragraph 11 except admit that the Village of Scarsdale has upon request permitted access to and use of Chase Park by the Boy Scouts of America and the Scarsdale Art Association, for various lawful requested purposes including art shows and camping and that the American Legion and the Boy Scouts of America have been permitted access to and use of Boniface Circle for purposes relating to its status as a War Memorial.

12. Deny the allegations contained in paragraph 12 except admit that from 1957 through 1980 the Committee was given access to Boniface Circle for the purpose of erecting and displaying its wood-carved creche during December and January, and that the Committee was exclusively responsible for

erecting and removing the creche and restoring Boniface Circle to its previous condition after the creche was removed.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 except admit that from 1976 through 1980, in response to and in compliance with a resolution passed by the Board of Trustees in 1976, the Committee displayed a sign beside the creche which stated, "This creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization."

14. Admit the allegations contained in paragraph 14 that the Committee submitted application to the Board of Trustees seeking permission to erect and display its creche on Boniface Circle during the 1981 Christmas season and that the application stated that "all conditions set up in past years will be followed."

15. Deny the allegations contained in paragraph 15 except admit that on November 19, 1981, the Board of Trustees voted 4-3 to deny the Committee's application.

16. Admit the allegations contained in paragraph 16 that the Committee submitted an application to the Board of Trustees seeking permission to erect and display its creche on Boniface Circle during the 1982 Christmas holiday season and that the application stated that: "All conditions set up over the past years will be carried out by the committee."

17. Deny the allegations contained in paragraph 17 except admit that on December 1, 1982, the Board of Trustees voted 4-3 to deny the Committee's application.

18. Deny knowledge of information sufficient to form a belief as to the truth of allegations contained in paragraph 18 except admit that the creche is a religious symbol.

19. Deny the allegations contained in paragraph 19.

20. Deny the allegations contained in paragraph 20.

21. Deny the allegations contained in paragraph 21.

22. Admit the allegations contained in paragraph 22.

23. Deny the allegations contained in paragraph 23, except admit that on December 14, 1982 the Board of Trustees voted

4-3 to deny the application made by 17 residents to display and erect a creche in Boniface Circle.

24. Deny the allegations contained in paragraph 24.

25. Admit the allegations contained in paragraph 25 that the Committee submitted an application to the Board of Trustees seeking permission to erect and display its creche on Boniface Circle during the 1983 Christmas season, that the application stated that "all conditions required during the past years will be met," and that the Committee requested that the application be considered at the board meeting scheduled for April 26, 1983.

26. Admit the allegations contained in paragraph 26 that the Board of Trustees by letter dated April 21, 1983, advised the Committee that:

> "The Board, whatever its individual views on the merits, is unanimous in the hope that this divisive issue will be resolved in the courts. Litigation is, of course, prolonged but we hope this case will be expedited. Accordingly, until the progress of the litigation is clearer, it does not seem appropriate to add your request to the Board's agenda at this time."

27. Deny the allegations contained in paragraph 27.

28. Deny the allegations contained in paragraph 28.

FIRST DEFENSE

29. The complaint fails to state a claim upon which relief may be granted against the defendants.

SECOND DEFENSE

30. The granting of permission by the defendants to the plaintiffs to place a creche on Boniface Circle in order to give recognition to the birth of Jesus Christ and to celebrate and express religious convictions would have been in violation of the First and Fourteenth Amendments to the Constitution of the United States in that such action by the defendants would

not reflect a clearly secular purpose and would have constituted the use of public property in support of religion and for religious purposes.

THIRD DEFENSE

31. The granting of permission by the defendants to the plaintiffs to place a creche on Boniface Circle in order to give recognition to the birth of Jesus Christ and to celebrate and express religious convictions would have been in violation of the First and Fourteenth Amendments to the Constitution of the United States in that said action by the defendants would have had the impermissible effect of advancing religion and would have constituted the use of public property in support of religion and for religious purposes.

FOURTH DEFENSE

32. The granting of permission by the defendants to the plaintiffs to place a crech on Boniface Circle in order to give recognition to the birth of Jesus Christ and to celebrate and express religious convictions would have been in violation of the First and Fourteenth Amendments to the Constitution of the United States in that such action by the defendants would have constituted excessive government entanglement with religion.

WHEREFORE the Court is respectfully requested to:

(1) dismiss the complaint in its entirety against the defendants the Board of Trustees of the Village of Scarsdale and the Village of Scarsdale;

(2) issue a judgment declaring (i) that the denial by the Board of Trustees of the Village of Scarsdale of plaintiffs' applications to erect a creche at Boniface Circle was not in violation of the Constitution of the United States or any other law, and (ii) that approval by the Board of Trustees of the Village of Scarsdale of plaintiffs' applications to erect a creche at Boniface Circle would have violated the First and Fourteenth Amendments of the Constitution of the United States;

(3) grant defendants such other relief as the Court may deem appropriate; and

(4) award defendants their costs, disbursements and attorneys' fees in this action.

Dated: New York, New York
May 27, 1983

SIFF & NEWMAN, P.C.

By:_____
233 Broadway
New York, NY 10279
(212) 349-3990

KRAMER, LEVIN, NESSEN,
KAMIN & FRANKEL

By:_____
919 Third Avenue
New York, NY 10022
(212) 715-9100

Attorneys for Defendants

STIPULATION OF FACTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

The parties to the above-captioned actions hereby stipulate to the facts set forth below. Attached hereto and made a part of this Stipulation is an Appendix of documents referred to in the paragraphs of stipulated facts. The parties do not dispute the authenticity of any of the documents contained in the Appendix. The parties have also agreed that all deposition transcripts may be offered into evidence as if the deponents were testifying at trial. Answers to interrogatories in these actions also may be offered into evidence.

All parties reserve their rights to object to the admissibility of any stipulated facts, exhibits, portions of depositions or interrogatory answers on the grounds of relevance and materiality.

1. The Court has jurisdiction over the subject matter of Civil Action No. 83 Civ. 0987 and Civil Action No. 83 Civ. 3266 under 28 U.S.C. § 1331, 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983.

2. Plaintiffs in Civil Action No. 83 Civ. 0987 are Kathleen S. McCreary, David Drabkin, Ann F. Cawley, Angelina J. Messenger, Edward R. Napolitano, Charles E. Butler, John D. Hawkins, Nancy G. Steger, Richard Cacciato, Carol Ann Pascal, Mary T. Thompson and Gregory De Sousa (the "Citizens Group").[1] These plaintiffs are citizens of the United States and 11 are now residents of the Village of Scarsdale. Since the filing of the Complaint in this action, plaintiff Pascal moved from Scarsdale.

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1 The term "Citizens Group" is also sometimes used in this Stipulation to describe the 17 residents who applied to display a creche in Boniface Circle on December 7, 1982.

3. Plaintiffs in Civil Action No. 83 Civ. 3266 are The Scarsdale Creche Committee, Patricia Curran, Cynthia Barsuhn, Grace Fellows, Doris Adler, Mary Tully, Joan Mann and Maria Pedulla. The seven individual plaintiffs are citizens of the United States and five plaintiffs are residents of the Village of Scarsdale. All of the individual plaintiffs have a "Scarsdale, N.Y." post office address. These plaintiffs are hereinafter collectively referred to as the "Creche Committee".

The Creche Committee is a private unincorporated association of seven Protestant and Catholic churches. These seven churches are Immaculate Heart of Mary, Trinity Lutheran, Church of the Good Shepherd, Grace Lutheran, Church of St. Pius, Scarsdale Community Baptist and Our Lady of Fatima. Five of these churches are located in the Village of Scarsdale. Grace Lutheran is located in Eastchester and Our Lady of Fatima is located in Yonkers. Both have a "Scarsdale, N.Y." post office address.

The Creche Committee formed in 1957 for the purpose of commissioning the sculpting of a wood-carved creche to be displayed in the Village of Scarsdale during the Christmas seasons. The creche consists of a wooden frame approximately 6 feet high at the tallest point, dropping off on both sides to about 3-1/2 feet. It is approximately 9 feet long and 3 feet deep. The inside of the frame is covered with an oil painting. Placed inside the wooden frame are nine hand-carved wooden figures which were sculpted in 1958 by Robert Robbins, an artist from Scarsdale, at a cost of approximately $1,625.00. The carved figures portray the birth of Jesus Christ. The figures range in height from approximately 6-1/2 inches– 3-1/2 feet.

Each church contributes approximately $25 annually to the Creche Committee to defray the costs of displaying and maintaining the creche. Each of the seven individual plaintiffs represents a church on the Creche Committee. Plaintiff Curran is Chairman of the Creche Committee.

4. The two defendants common to Civil Action No. 83 Civ. 0987 and Civil Action No. 83 Civ. 3266 are the Village of Scarsdale ("Scarsdale" or the "Village"), a municipal corporation located in the County of Westchester, State of New York and the Board of Trustees of Scarsdale, the governing body of the Village.

5. The four individual defendants named in Civil Action No. 83 Civ. 0987 who are not named in Civil Action No. 83 Civ. 3266 are Jean Stone, Elisabeth M. Brown, Edward Falkenberg and Beatrice K. Underweiser. Jean Stone formerly served as Mayor of Scarsdale during 1981, 1982 and during the period from January 1, 1983 to April 4, 1983; she served as a Trustee of Scarsdale during 1979, 1980, 1981, 1982 and during the period from January 1 to April 4, 1983. Elisabeth M. Brown formerly served as a Trustee of Scarsdale during 1979, 1980, 1981, 1982 and during the period from January 1 to April 4, 1983. Edward Falkenberg served as a Trustee of Scarsdale during 1981, 1982 and currently serves as a Trustee. Beatrice K. Underweiser served as a Trustee of Scarsdale during 1980, 1981, 1982 and currently serves as a Trustee.

6. The Village and the Board of Trustees (the "Board") have under their jurisdiction, management and control the parks, streets and other public properties and facilities located in Scarsdale.

Lowell J. Tooley has been employed as Scarsdale's Village Manager since April, 1961. Mr. Tooley was employed as Scarsdale's Assistant Village Manager from February, 1956 to April, 1961.

7. Boniface Circle, originally known as Tower Circle, was acquired from the Scarsdale Improvement Corporation on March 26, 1931. The Deed to the Village is Exhibit 1 in the Appendix to this Stipulation.[2]

8. Beginning in 1956, at the request of four Scarsdale churches (St. Pius X, Immaculate Heart of Mary, the Lutheran Church and St. James the Less Church) the Board of Trustees of the Village of Scarsdale granted permission to place a

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2 References to documents contained in the Appendix are cited hereinafter as "(Ex.)".

creche on Boniface Circle (Ex. 2). In each year from 1957 through 1982, the Creche Committee submitted a written application to the Board seeking permission to display its creche at Boniface Circle during the Christmas season. In each year from 1957 through 1980, the Board granted the Creche Committee's application for permission to display the creche at Boniface Circle. In 1981 and 1982, the Board voted 4-3 to deny the Creche Committee's applications. Copies of those applications which are still available and those portions of the minutes of the meetings of the Board which reflect the discussions, grants and denials of the Creche Committee's applications are Ex. 3-28.

9. The Creche Committee's requested duration of the creche display was as follows:

(a) Until 1980, the applications did not specify a duration for the display. They requested only that the creche be displayed during the Christmas season.

(b) In 1980 and 1981, the application by the Scarsdale Creche Committee requested that the creche be allowed from December 17 to be removed "as soon as possible after the New Year."

(c) In 1982, the request by the Scarsdale Creche Committee sought permission from December 16, 1982 to be removed "as soon as possible after the New Year."

(d) In 1983, the request of the Scarsdale Creche Committee was for the 1983 Christmas season.

10. The voting of the Board of Trustees on the Creche Committee's applications from 1957 to 1982 was as follows:

1957-1972—Unanimous approval by the Trustees

	Ayes	Nays	Abstentions	Absent
1973—	Steyer*		Szabad	
	Finney			
	Hackett			
	Heming			
	Hodges			
	Johnson			
1974—	Steyer*		Szabad	Kahn
	Brennan			
	Heming			
	Hodges			
	Johnson			
1975—	Johnson*	Richman	Szabad	
	Brennan			
	Heming			
	Jensen			
	Kahn			
1976—	Johnson*	Richman		Szabad
	Brennan			Kahn
	Gordon			
	Jensen			
1977—	Szabad*	Richman		
	Jensen			
	Brennan			
	Browning			
	Gordon			
	Kahn			
1978—	Szabad*	Richman		
	Browning	Sims		
	Jensen			
	Stone			
	Gordon			

1979—By a vote of 5-1, with Trustee Sims voting nay, permission was granted.

	Ayes	Nays
1980—	Jensen*	Sims
	Brown	Stone
	Browning	Underweiser
	Ullman	
1981—	Brown	Stone*
	Bowen	Sims
	Ullman	Falkenberg
		Underweiser
1982—	Brown	Stone*
	Ullman	Brown
	Glendon	Falkenberg
		Underweiser

*Also Mayor

11. In each year from 1957 through 1980, the Creche Committee neither solicited nor received any funds from the Village in connection with the storage, erection, display or removal of the creche.

12. In each year from 1957 through 1980, the Creche Committee neither solicited nor received any assistance or support from the Village in connection with the storage, erection or removal of the creche. In some years prior to 1977, a 40-watt incandescent light bulb within the creche was connected at night to a municipal light standard at Boniface Circle.

13. In each year from 1958 through 1980, the Creche Committee restored Boniface Circle to its previous condition after the creche was removed.

14. In each year from 1976 through 1980, the Board, in granting permission to display the creche, required the Creche Committee to display a sign beside the creche which stated "This creche has been erected and maintained solely by the

Scarsdale Creche Committee, a private organization". The Board did not specify the size of the sign it required.

In each year from 1976 through 1980, the Creche Committee complied with the Board's sign requirement. The sign which the Creche Committee displayed from 1978 through 1980 is Ex. 29.

15. On December 7, 1982, 17 residents of Scarsdale, four of whom are members of the Citizens' Group, submitted an application to the Board seeking permission to display a creche at Boniface Circle during the 1982 Christmas season, specifically from December 18 to December 26, 1982. (Ex. 30).

16. On December 14, 1982, the Board voted 4-3 to deny these 17 residents permission to erect and display a creche at Boniface Circle. The vote was as follows:

Ayes	Nays
Trustee Bowen	Mayor Stone
Trustee Ullman	Trustee Brown
Trustee Glendon	Trustee Falkenberg
	Trustee Underweiser

A copy of that portion of the minutes of the Board's December 14, 1982 meeting which reflects the discussion and denial of that application is contained in Ex. 28.

17. On February 3, 1983, the Citizens' Group submitted an application to the Board seeking permission to display a creche at Boniface Circle during the 1983 Christmas season, specifically from December 17 to December 26, 1983. (Ex. 31).

18. On April 12, 1983, the Creche Committee submitted an application to the Board seeking permission to display its creche at Boniface Circle during the 1983 Christmas season. The Creche Committee requested the Board to consider its application at the Board meeting scheduled to be held on April 26, 1983. (Ex. 32).

19. By letter dated April 21, 1983, Seymour E. Sims, current Mayor of Scarsdale, responded to the Creche Committee that the question of allowing the placement of a creche on Boniface Circle was the subject of a pending lawsuit and

accordingly it was not appropriate to consider the application at that time. (Ex. 33).

20. The following occurred with respect to the placement of a creche at Boniface Circle.

(a) On September 13, 1960, the Scarsdale section of the American Jewish Congress sent a letter to the Board opposing the placement of the creche on Boniface Circle. (See Ex. 6).

(b) In 1961, the Board of Trustees passed a resolution appointing a special committee of three Trustees to study and report to the Board on the issue of the creche at Boniface Circle. (See Ex. 7).

(c) At the October 23, 1962 Board meeting, the Special Committee appointed by the Board made its report on the subject of the creche. (See Ex. 8).

(d) At the executive session of the Board meeting on October 23, 1962 Trustee Hunger reported that the Special Committee appointed considered the creche issue with various groups and recommended that permission be granted that year. (See Ex. 8).

(e) By letter dated January 8, 1963, the President of the Scarsdale Chapter of the American Jewish Congress sent a letter to the Board opposing the display of the creche on Village property. (See Ex. 9). At the next Board meeting, Trustee Hunger stated he had also received letters from the Chairman of the American Jewish Congress and from the Chairman of the American Jewish Committee both requesting a meeting. In response, the Board suggested a meeting with Dr. Giles, a professor at NYU in the field of Human Relations, between representatives of the special committee of the Board and the American Jewish Congress and the American Jewish Committee. (Ex. 9).

The special committee of the Board requested Dr. Giles to "conduct an informal meeting for the clarification of various points of disagreement on the location of a Christmas Creche in Boniface Circle." (See Ex. 9). At the request of Dr. Giles a meeting was held on March 28, 1963 at the Fire House. Representatives of the most divergent views were invited. (See Ex. 9).

(f) On December 4, 1975 Nettie Breines sent a letter to the Board opposing the placement of the creche on Boniface Circle. (Ex. 34). The Assistant Village Manager by letter dated December 12, 1975 to Ms. Breines noted the Mayor's comment to the Board. (Ex. 35).

21. On October 6, 1976 Leonard H. Rubin, an attorney and resident of Scarsdale, wrote a letter to John F. Holden, Jr., the Village Attorney, stating that if Mr. Holden concluded that the Village could permit the creche to be erected on Village property, he would commence litigation. (Ex. 36).

22. On December 15, 1976, Mr. Rubin commenced an action against the Village of Scarsdale and the Creche Committee in the United States District Court, Southern District of New York seeking: (a) a declaration that the placement of the creche on Village-owned park land was unconstitutional, and (b) an injunction against the Village of Scarsdale prohibiting the Board of Trustees from permitting the erection of a creche on Village-owned land in the future. Judge Ward dismissed the suit on the ground that the Court lacked subject matter jurisdiction. (*Rubin v. Village of Scarsdale*, 440 F. Supp. 607 (S.D.N.Y. 1976)).

Copies of the amended complaint, the answer, the Village's summary judgment papers and the Court's opinion are Ex. 37-40.

23. On November 10, 1976, five churches wrote to the Board of Trustees to offer the use of their property to the Creche Committee on a rotating basis for the annual display of the Creche. (Ex. 41).

24. The Creche Committee was aware of this offer from the years 1976 to until at least 1982. At the November 23, 1976 Board meeting, the November 10 letter suggesting that it might be more appropriate to have the creche rotated among church properties in the Village was noted. (See Ex. 22).

25. On November 18, 1976, the Immaculate Heart of Mary Church wrote a letter opposing removal of the creche at Boniface Circle. (Ex. 42).

26. In 1960, the Creche Committee was comprised of representatives from eleven local churches: Scarsdale Baptist,

Scarsdale Congregational, Grace Lutheran, Trinity Lutheran, Immaculate Heart of Mary, Our Lady of Fatima, Pope Pius X, Greenville Community, St. James the Less, Church of the Good Shepherd and Hitchcock Presbyterian Church.

27. Since 1976, the Scarsdale Congregational Church, Greenville Community Church, Hitchcock Presbyterian Church and the Church of St. James the Less no longer were represented on the Scarsdale Creche Committee.

28. In 1976, the Scarsdale Human Relations Advisory Council was asked by the Village Manager on behalf of the Board to give its "appraisal of how the population of Scarsdale feels about using Boniface Circle for locating the creche." (Ex. 43). The Advisory Council was established by the Board for the purpose of advising the Board with regard to any human relations issues which might arise in Scarsdale. The members of the Advisory Council are appointed by the Board.

29. From 1976 to 1982 the Advisory Council made recommendations to the Board of Trustees regarding the creche:

(a) From 1976 to 1978 the Advisory Council recommended that in the interests of community relations, permission be granted to the Creche Committee. (Ex.44-45).

(b) From 1980 to 1982, the reports stated that it was the Advisory Council's belief that the creche should be placed on non-public property and it urged the Creche Committee to seek other sites; it also recommended, that in the interests of community relations permission be granted to the Creche Committee to use Boniface Circle. (Ex. 46-48).

30. While granting permission to the Creche Committee to erect its creche at Boniface Circle in 1979, "It was strongly recommended by all the Trustees that the Creche Committee consider rotating the creche among various Village churches in future years." (Ex. 49).

31. In 1980, the Board granted the request of the Creche Committee. The Village's letter to the Creche Committee stated that "Mayor Jensen pointed out that in light of the division caused by this issue, the Board strongly urges that next year the Committee erect the creche at a location other than Village-owned property." (Ex. 50).

32. On May 29, 1980, Plaintiffs Curran, Barsuhn, Mann and Theresa Vohnout, Treasurer of the Creche Committee, met with members of the Advisory Council to discuss and consider possible alternative locations for the creche. Two locations, the Frog Prince Proper restaurant and the Manhattan Bank for Savings were discussed. The Creche Committee was later advised by the Advisory Council that these locations were not available.

33. In November, 1981, after permission by the Board to place their creche on Boniface Circle was denied, the Creche Committee was offered the grounds of the "Frog Prince Proper" restaurant for the display of their creche in 1981. The Creche Committee accepted the offer and erected their creche at the Frog Prince Proper restaurant on December 17, 1981.

34. In March, 1982, the Creche Committee representatives met with former Mayor Jean Stone, the Village Trustees, Village Manager Lowell J. Tooley, members of the Advisory Council, members of the Chamber of Commerce and members of the Scarsdale Police Department to discuss the concept of establishing a "Heritage Plaza" in Scarsdale. The concept was to make an area of land available for displays of a patriotic, ethnic, charitable or religious nature as well as for such uses as folk dancing, singing and other social and cultural activities. Chase Park was discussed at the March meeting as a location for the "Heritage Plaza". Because Chase Park is Village-owned it was proposed at that meeting that Scarsdale would submit a bill to the New York State Legislature authorizing the transfer to a private entity of a portion of Chase Park. The Creche Committee representatives stated that they were in favor of the proposal and in favor of displaying the creche at Chase Park because it is centrally located and accessible to pedestrians. Mayor Stone recommended that the bill which had been introduced, be permitted to die in Committee on the advice of Assemblyman Gordon Burrows' office. This advice was that because of opposition to the bill, including from the A.C.L.U., "a very large and ugly floor fight loomed ahead in the State Legislature." (Ex. 51).

35. In June, 1982, Mayor Stone wrote a letter to Dr. Howard Goldin on the subject of the creche which was copied to the other members of the Board of Trustees, Lowell J. Tooley, the Village Manager and John F. Holden, Jr., the Village Attorney. (Ex. 52).

36. The November 23, December 1 and December 14, 1982 Board minutes contain detailed statements by the Board of Trustees with respect to the creche applications of the Scarsdale Creche Committee and the Citizens Group. (See Ex. 28).

(a) Prior to the meeting on December 1, 1982 Mayor Stone requested Trustee Glendon and the Law Committee to deliver a report as to the course of action the Board should take with respect to the display of the creche during the 1982 Christmas season. After submission of Trustee Glendon's memorandum, Trustee Underweiser and two persons not associated with the Village government submitted memoranda concerning the display of the creche. These four memoranda are Ex. 53-56.

(b) Trustee Ullman as chairman of the Law Committee did not submit a written report to the Board. At the December 1, 1982 special Board meeting to consider the Creche Committee's request, Trustee Ullman advised the Board that no unanimity could be reached by members of the Law Committee and it was not in a position to give "a clear direction" to the Board.

(c) In preparation for speaking at the December 1, 1982 Board meeting, Trustee Ullman prepared 7 pages of handwritten notes on the issue of the display of the creche. (Ex. 57). Trustee Ullman has identified Ex. 58 as an accurate type-written version of these notes.

37. After the Creche Committee was denied permission to display the creche at Boniface Circle, it learned that Mr. Durning, owner of the former "Frog Prince Proper" restaurant at 28 Chase Road was offering this site for the display of the creche during the 1982 Christmas season. Plaintiff Curran received a letter dated December 5, 1982 from the Scarsdale Congregational Church offering its property for the display of the creche. Plaintiff Mann learned that her church, the Scarsdale Community Baptist Church, was offering the use of its

property to the Creche Committee. The Creche Committee declined to accept the offers.

(a) *Scarsdale Congregational Church (United Church of Christ)*

The Scarsdale Congregational Church is located at the junction of Heathcote, Post, Drake and Crane Roads. Village Hall is also located at this intersection. The church property extends to a narrow pitched peninsula from land that abuts both the Post Road and Heathcote Road, where there are no sidewalks. The outline of buildings on the church property are shown on the attached map. (Ex. 59). Building "1" is Dyckman Hall, a multi-purpose building used for a wide spectrum of activities including religious activities sponsored by the church and secular activities sponsored by groups unaffiliated with the church. The Congregational Church did not specify in its offer where the creche could be located and the Creche Committee did not ask where the creche could be placed.

The Village lamp posts within half a mile of the Church are not decorated with Christmas lights or other decorations. There are no sidewalks. There is extensive free parking nearby for those who wish to park their car and physically visit the creche. Photographs of the site are Ex. 60.

The intersection at which the Congregational Church is located is one of the most trafficked in Scarsdale.

(b) *The Frog Prince Proper Restaurant*

The site offered in 1982 is the same site where the Creche Committee's creche was prominently displayed in December 1981. This is a flat area in front of the restaurant across the street from Boniface Circle.

(c) *Scarsdale Community Baptist Church Site*

The Baptist Church is located on Popham and Autenrieth Roads. Attached as Ex. 61-a is a topographic map which shows the church building marked as "1". The Village lamp

posts within one block of the Church are not decorated with Christmas lights or other decorations. Photographs of the site are Ex. 61-b. The Scarsdale Creche Committee was not told of the proposed site and did not ask where the creche could be placed.

38. Publicly owned facilities other than Boniface Circle were never offered to or requested by the Creche Committee or the Citizens Group for the purposes of their applications to display a creche in 1981 or 1982.

39. Letters to the Mayor and the Trustees, and Editors, on the display of the creche at Boniface Circle expressed diverse viewpoints. Ex. 62 contains letters in chronological order from Scarsdale residents opposed to the placement of a creche on public property.

Ex. 63 contains letters in chronological order from Scarsdale residents in favor of the placement of a creche on public property.

Ex. 64 contains letters in chronological order from the plaintiffs.

Ex. 65 contains letters in chronological order from non-residents and letters that are unsigned.

40. Local newspaper treatment of the subject of the creche from 1976 through 1982 is Ex. 66.

41. (a) Some residents of Scarsdale who are not of the Christian faith are offended by display of the creche on public property because they believe it to favor the Christian religion and to be offensive and hostile to their different beliefs or non-beliefs. Some residents, both Christian and non-Christian, object to the creche because they perceive the placement of this symbol on public property as giving government sanction to, or support an endorsement of, the religious beliefs thus symbolized. Some, both Christian and non-Christian, object because they perceive the creche on public property as mingling government and religion in objectionable fashion.

(b) Some residents of the Village are offended that the Village has denied permission for the erection of the creche at Boniface Circle. Some of those residents view the display of the creche at Boniface Circle as a long standing tradition

signifying dedication to peace and goodwill among men and women everywhere. Others view the creche as a symbol of the religious aspects of Christmas. Some residents view the Village's denial of permission to erect the creche as a denial of their right to express or receive a Christmas message or as an official rejection of the message which the creche brings to them.

42. Listed below are some of the parks and public properties owned by the Village of Scarsdale:

Boniface Circle
Chase Park or Chase Road Park
Davis Park
Butler Field
Crossway Field
Greenacres Field
Hyatt Field
Wayside Cottage
The Island at Depot Plaza (the Railroad Station)
Village Hall
Crossway Fire House
The Public Library
Municipal Swimming Pool Complex
Popham Road Bridge

43. There are eight rules and regulations governing access to and use of the Village's parks and recreation facilities which have been in effect since at least 1979. (Ex. 67).

44. There is no published statute, law, ordinance, rule or regulation in effect in the Village which states that persons wishing to use Village-owned parks or other public properties must first apply for permission from the Board of Trustees. The Village has no published statute, law, ordinance, rule or regulation which contains the standards, guidelines or criteria upon which the Board bases its decision to grant or deny an applicant permission to use Village-owned parks or other public properties. Village Code Section 4-1-2 states as follows:

No person shall interfere with, take or use any of the property of the Village without first obtaining the consent of the Village Manager.

45. Boniface Circle is located in the center of the retail business district of the Village. Boniface Circle is near oval-shaped and is approximately 3,257 square feet in size. Located inside Boniface Circle are an evergreen tree, approximately 30 feet tall, two benches, two lamp posts, dense hedges, a walkway and a flagpole at the southern end in an open grassy area. At the north end of Boniface Circle, there is a memorial to the veterans of World War II which one can reach by climbing down a few steps. Photographs of various views of Boniface Circle are attached as Ex. 68a-m. Ex. 68h-68m were taken on July 6 and July 7, 1983.

46. In 1947, the Board of Trustees formed a Scarsdale War Memorial Committee to decide whether Scarsdale should have a War Memorial. (Ex. 69).

47. In June 1947, the War Memorial Committee presented its findings. (Ex. 70).

48. In a letter to the American Legion dated March 10, 1947, it was suggested that the War Memorial be located at Boniface Circle. (Ex. 71).

49. The matter of the War Memorial was referred to the Public Property and Library Committee which issued a report on September 9, 1947 recommending that the Board of Trustees accept the report of the War Memorial Committee. (Ex. 72).

50. In September 1947, the Board of Trustees passed a resolution, providing for the erection of a War Memorial at Boniface Circle. (Ex. 73).

51. In 1949, a contract was awarded for the construction of the War Memorial. (Ex. 74).

52. Boniface Circle is frequented throughout the year by people.

53. Business and residential properties facing Boniface Circle (Ex. 75a-75c):

(a) Boniface Circle is bounded by Chase Road on the east and Spencer Place on the north.

(b) The businesses abutting these streets and those which "face" Boniface Circle and the site upon which the Creche Committee's creche was displayed are as follows:

Chase Road

(1) There are two buildings here along Chase Road which face Boniface Circle. The first building, which houses the "Chase Landing" restaurant, is directly opposite the place where the Scarsdale Creche Committee's creche was displayed at Boniface Circle. This building is set back from the street and sidewalk and has a slightly raised brick terrace in front of it. Closer to the sidewalk and in an earthen landscaped area with plantings and flower beds is where the Creche Committee's creche was placed in 1981. The "Chase Landing" restaurant is the former "Frog Prince Proper" restaurant.

(2) The other building which abuts Chase Road and overlooks Boniface Circle is known as "45 Popham". This is a six-story building which abuts both Chase Road and, around the corner, Popham Road. Along Chase Road is a row of retail businesses. This one-story area is physically attached to the apartment building. There are three businesses in this building which open onto Chase Road facing Boniface Circle:

a. "Westchester Federal Savings and Loan Association"
b. "Bill's Sporting World"
c. "The Craftsman's Gallery"

There are 63 residential apartments in the 45 Popham building; about 25 of them face onto Chase Road looking out west and north.

The Harwood Building

All of the following businesses are located in a single building known as the Harwood Building. On the first floor of this building facing Boniface Circle there are retail businesses. From the second to the fifth floor in the Harwood Building, there are mainly business and professional offices. There are

no residential units in the Harwood Building. The Harwood Building overlooks Boniface Circle and in a sense surrounds it on two of its sides.

The retail businesses in the first floor of the Harwood Building opening up on Boniface Circle are as follows:

(1) "The Scarsdale Hardware Company, Inc." at the southeast corner.

(2) On the north side of the arcade in the first floor of the Harwood Building is the "Harwood Shoe Repair".

(3) "Wright & Irish Grocery Store" is to the north.

(4) Next is the "Gallery of Art & Antiques".

(5) The last store in the Harwood Building on Boniface Circle is "Lady Budd", a woman's clothing store.

(c) *Spencer Place*

There are businesses which face Boniface Circle from Spencer Place. Only those businesses which are east of the crosswalk "N" in Ex. 75a are listed. The building containing these retail stores is only a single story high.

(1) "County Boy's and Men's Shops, Inc." is opposite the crosswalk.

(2) "Spencer Book House" to the east.

(3) Next is "Scarsdale Shoe Shop".

(4) Next is "Mary Rothman", a woman's dress shop.

(5) Next is "Julia B. Fee, Realtors".

(6) Next is "Young Vogue", a children's clothing store.

(7) The last store in this building is "Lange's Delicatessen".

(8) After a driveway, the last building abutting Spencer Place facing Boniface Circle from the north is the south side of the Scarsdale Post Office.

54. Wayside Cottage is a Village-owned 18th century historic structure located at 1039 Post Road in Scarsdale which was dedicated by the Board of Trustees on April 27, 1976 as a "Historic monument of major significance". (Ex. 76). Wayside Cottage was deeded to the Village in 1919 by Emily O. Butler, "for the purpose of creating an historical park and

for the purpose of fostering a general public and democratic spirit in the community, of providing a center for civic welfare of the village, and for providing a club house, club rooms, or lyceum for the use by people of Scarsdale for such purposes, and for maintaining a museum or reading room thereon . . ." (Ex. 77).

On April 5, 1953, the Village entered into a lease with the Junior League of Scarsdale, pursuant to which the Junior League was permitted use of Wayside Cottage rent-free. The lease provided that the Village would pay for all taxes, assessments, major repairs and major maintenance, and over time the Village has contributed to the maintenance of and capital improvements for Wayside Cottage. Under the terms of the lease, the Junior League was obligated to use Wayside Cottage exclusively for one or more of the following purposes:

(a) Promoting the welfare of the Village of Scarsdale;

(b) Fostering a general public and democratic spirit in the community;

(c) Conducting a center for the civic welfare of the Village;

(d) Maintaining a clubhouse, club rooms or lyceum for the use of the people of Scarsdale;

(e) Maintaining a museum or reading room.

The 1953 lease authorized the Junior League to permit other groups and organizations in Scarsdale to use Wayside Cottage if they were organized for one or more of the purposes set forth above; if a group or organization was not clearly organized for one or more of those purposes, the Junior League was not authorized to permit it to use Wayside Cottage without prior written permission from the Village. The lease also provided that the Junior League was to discontinue permitting use of Wayside Cottage by any group if notified by the Village that the group was not organized for one of the purposes set forth above.

On October 20, 1967, the Junior League renewed its lease with the Village for an additional fifteen-year period on the same terms and conditions contained in the original 1953 lease. For many years, including 1981 and 1982, the Village has provided fuel oil to the Junior League at a reduced rate

available to the Village and otherwise unavailable to the Junior League. The Junior League has, since 1953, acted as custodian of Wayside Cottage, maintaining the premises for Village use.

A new lease dated March 17, 1983 signed by Mayor Stone between the Village of Scarsdale and the Junior League substantially repeats the terms of the original 1953 lease. As before, the Village as lessor agrees to provide various capital expenditures from time to time for the maintenance of and capital improvements to Wayside Cottage.

For some time the Junior League has rented rooms in Wayside Cottage for various private functions.

55. The Scarsdale Public Library, located on Olmstead Road in Scarsdale, is administered by the Library Board which in turn is directly accountable to the Board of Trustees. The "Scott Room" is a separate room area in the Public Library which is available to the public for informational, educational, cultural and recreational uses. The two-page document which is Ex. 78 sets forth the Public Library's policy, regulations and fees which govern the public's use of the Scott Room. The Village contributes to the maintenance of and capital improvements for the Public Library.

56. For many years, including 1981 and 1982, the Village of Scarsdale permitted access to and use of several of the streets located in the Heathcote, Central Business (which includes Boniface Circle) and Garth Road areas of the Village by the Scarsdale Chamber of Commerce for the purpose of installing and displaying Christmas lights and ornaments. The Chamber of Commerce was allowed to display these lights on Village-owned utility poles for approximately one month each year, commencing on or about December 1 and ending shortly after January 1 of the following year. The Chamber of Commerce was not required to seek permission from the Board of Trustees before installing and displaying these lights and ornaments. The Village of Scarsdale did not require the Chamber of Commerce to display signs beside the utility poles to indicate that it was the Chamber of Commerce that installed and displayed the Christmas lights and ornaments. The Village of Scarsdale also permitted the members of the Scarsdale

Chamber of Commerce to broadcast Christmas music in the Heathcote, central business and Garth Road areas during the month of December when the Christmas lights and ornaments were displayed.

57. For many years, including 1981 and 1982, the Village of Scarsdale permitted access to and use of Boniface Circle by the Scarsdale Chamber of Commerce for the purpose of installing and displaying Christmas ornaments. The Chamber of Commerce was allowed to display these Christmas ornaments on the two lamp posts in Boniface Circle for approximately one month each year, commencing on or about December 1 and ending shortly after January 1 of the following year, and on the lamp posts directly surrounding Boniface Circle. The Chamber of Commerce was not required to seek permission from the Board of Trustees before installing and displaying these ornaments. The Village of Scarsdale did not require the Chamber of Commerce to display signs beside the lamp posts to indicate that it was the Chamber of Commerce that installed and displayed the Christmas ornaments.

58. In each of the years 1959, 1962, 1963, 1964, 1965, 1968, 1969, 1970 and 1971, the Village of Scarsdale permitted access to and use of Boniface Circle by the Town Club, a private group of Scarsdale residents, so that the Town Club could celebrate Christmas through a Christmas Carol Sing. Clergymen from local churches offered invocations and benedictions at the Carol Sing in 1959, 1960, 1969 and 1970. In some of the years indicated above, the Village of Scarsdale provided the Town Club with Village-owned loudspeakers for use in connection with the annual Christmas Carol Sing at Boniface Circle. In 1971 the Village picked up and returned platforms to the high school used in connection with the Christmas Carol Sing. In the years indicated above, the Mayor or a member of the Board of Trustees, upon invitation of the Town Club, attended the Christmas Carol Sing and welcomed the Christmas carolers in his or her official capacity. (Ex. 79).

In 1958, the Town Club's Carol Sing was at Chase Road adjoining Boniface Circle. In 1960, the Carol Sing was held at

the High School. In 1966, the Carol Sing was held on Chase Road. In 1967, the Carol Sing was held at Chase Road Park.

59. From 1972 through 1981, the Village of Scarsdale permitted access to and use of the plaza outside the entrance to Village Hall, the seat of Scarsdale's local government, by the Town Club so that the Town Club could celebrate Christmas through its annual Christmas Carol Sing as described in paragraph 58 above. In recent years, the arrival of "Santa Claus" or "Saint Nicholas" on one of the Village-owned fire trucks has been a feature of the Town Club's annual Christmas Carol Sing in front of Village Hall. On December 20, 1981, former Mayor Jean Stone attended the Christmas Carol Sing and welcomed the carolers in her official capacity as Mayor of Scarsdale.

60. On December 19, 1982, the Village of Scarsdale permitted access to and use of Boniface Circle by the Town Club for one afternoon so that the Town Club could celebrate Christmas through its annual Christmas Carol Sing as described in paragraph 58 above. The arrival of "Santa Claus" or "Saint Nicholas" on one of the Village-owned fire trucks was a feature of the Town Club's 1982 Christmas Carol Sing. Elisabeth M. Brown attended the 1982 Christmas Carol Sing and welcomed the carolers in her official capacity as a Trustee and Deputy Mayor of Scarsdale. The Town Club's repertoire of Christmas carols at Boniface Circle in 1982 included the following songs:

The First Noel
It Came Upon The Midnight Clear
Hark The Herald Angels Sing
Oh Come All Ye Faithful
Rock of Ages
Silent Night
O Little Town Of Bethlehem
Joy To the World
We Three Kings
God Rest Ye Merry Gentlemen
Jingle Bells

Hanukah
Deck The Halls
Jolly Old St. Nicholas
Oh Christmas Tree
Angels We Have Heard On High
Rudolph The Red-Nosed Reindeer
Frosty The Snowman
Santa Claus Is Comin' To Town

This repertoire is attached as Ex. 80.

61. For many years, including 1981 and 1982, the Village has permitted access to and use of both the front entrance to and the lobby inside Village Hall by Village employees for the purpose of erecting, decorating and displaying Village-owned Christmas trees. Village employees have been authorized to display these trees at Village Hall for approximately one month each year, commencing on or about December 1 and ending shortly after January 1 of the following year. The cost of electricity has been borne by the Village.

62. In 1982, at the request of the Town Club, the Village permitted access to and use of Boniface Circle by Village employees for the purpose of installing and displaying Village-owned Christmas lights on the large evergreen tree located in the center of Boniface Circle. Village employees were authorized to install and display these Christmas lights on the evergreen tree for approximately two and one-half weeks, commencing on or about December 15, 1982, and ending shortly after January 1, 1983. The cost of the electricity was borne by the Village.

63. For many years, including 1981 and 1982, the Village has permitted access to and use of Davis Park by the Arthur Manor Community Association for the purpose of installing and displaying Christmas lights and ornaments on a large evergreen tree owned by the Village. The Arthur Manor Community Association has not been required to seek permission from the Board of Trustees before displaying these lights and ornaments. The cost of the electricity has been borne by

the Village. The Village has not required the Arthur Manor Community Association to display a sign beside the evergreen tree to indicate that it is the Arthur Manor Community Association that installs and displays the lights and ornaments. In some years, the Arthur Manor Community Association conducted a Christmas Carol Sing on a day prior to Christmas at Davis Park and the Village has permitted use of Village-owned loudspeakers by the Arthur Manor Community Association in connection with the Christmas caroling.

64. For many years, the Village of Scarsdale has permitted access to and use of Boniface Circle, Butler Field and various streets in the Village by The American Legion, the Boy Scouts, the Girl Scouts, members of the clergy and other Scarsdale groups and individuals for the purpose of holding a Memorial Day ceremony and parade. The Memorial Day ceremony and parade are sponsored by Scarsdale Post No. 52 of The American Legion. Members of The American Legion traditionally begin the Memorial Day ceremony by placing a wreath at the War Memorial located at Boniface Circle. A member of the clergy, who varies from year to year, then leads the parade participants in a prayer at Boniface Circle. After the ceremony at Boniface Circle is concluded, the parade units proceed through Village streets to Butler Field for the remainder of the celebration which includes speeches, a "presentation of the colors" by the Scouts, a salute to the flag, songs, prayers, a firing squad salute to the dead and awards. Each year the members of the Village Board are invited by The American Legion to participate in the Memorial Day Parade. Starting in 1964, the Board of Trustees, in accordance with Section 89(32) of the Village Law, authorized the expenditure of up to $250.00 for Memorial Day observances.

65. In 1961, permission was granted to the Town Club to hold a portion of the Fourth of July celebration at Boniface Circle for a salute to the flag and patriotic speeches.

66. For many years, the Village of Scarsdale through the Board or agencies of the Village government has permitted access to and use of the grounds of Village Hall, Chase Park, Depot Plaza, Crossway Field and Village streets by various

individuals and groups for such purposes as speechmaking, demonstrating, participating in silent vigils and distributing petitions and other communications. Among the groups which have been allowed to engage in such demonstrations and silent vigils are SCORE (Student Coalition Opposed to the Radical Establishment), the Vietnam Committee of the Scarsdale High School, the Westchester Committee for a Sane Nuclear Policy, SMART (Students for More Appropriate Responsible Thinking), the Scarsdale Appeal for Peace and United Westchester for Peace.

67. For several years, the Village has been aware that the Junior League permits access to and use of Wayside Cottage by numerous groups and individuals. For example, during the period from 1982 to 1983, the following groups and organizations used the Cottage for activities:

Congregation M'Vakshe Derekh
Bahai Faith Group
Mary Kay Cosmetics
Alcoholics Anonymous
Avon
Scarsdale Ski Club
Ladies of Charity
Scarsdale Woman's Exchange
"TM" Transcendental Meditation Program
Daughters of the American Revolution
Obedience Training Club of Port Chester
Crane-Berkley Association
Bramley Heights Neighborhood Association
Green Knolls Civic Association
Wilmont Woods Association
College of New Rochelle Alumni
Association of American University Women
Scarsdale Woman's Club
Bronxville Manor Association
National Alliance of Homebased Businesswomen
Saw Mill River Kennel Club
Catholic Woman's Club of Eastchester

Greenacres Association
Westbrook Junior College
Hamilton College Westchester Association
Juvenile Law Education Project

Congregation M'Vakshe Derekh and the Bahai Faith Group have used Wayside Cottage for religious services. Wayside Cottage has also been used for a Catholic Mass, a Unitarian wedding ceremony, Bar Mitzvahs and religious services by the Bet Ami Conservative Synagogue. As reported in the June 23, 1983 edition of the Scarsdale Inquirer, Congregation M'Vakshe Derekh was holding its regular Sabbath services at Wayside Cottage. (Ex. 81).

68. For several years, the Village has been aware that the Scarsdale Public Library permits access to and use of the Library's "Scott Room" by numerous groups for such purposes as speeches, lectures, workshops, classes, films, music recitals, seminars, meetings, receptions, panel discussions, book fairs, luncheons and concerts. Among the groups which have been permitted access to and use of the "Scott Room" for the above-described purposes from June 1981 through May 1983 are:

Congregation M'Vakshe Derekh
Planned Parenthood of Westchester
Westchester Educational Brokering Service
Scarsdale Antiques Running Club
Philharmonic Symphony of Westchester
Musica da Camere
Friends of Scarsdale Public Library
Scarsdale Cultural Center
Williams Enterprises
Scarsdale Adult School
Scarsdale Hadassah
Scarsdale/Hartsdale United Nations Association
Drexel Burnham Lambert, Inc.
National Council of Jewish Women
Scarsdale Historical Society
Scarsdale Phi Beta Kappa
University of Pennsylvania Alumni
Town Club
Westchester Association for Special Educators

American Jewish Congress
Scarsdale Audubon Society
Archaeological Institute of America
Harvard-Radcliffe Club
Westchester Assoc. for Children with Learning Disabilities
Scarsdale Civic Club
United Jewish Appeal-Federation
Scarsdale Democratic Town Committee
Scarsdale Art Association
United Way
Scarsdale Citizens' Non-Partisan Campaign Committee
Gannett Westchester Newspapers
Wellesley-in-Westchester
Scarsdale Women's Republic Committee
National Society of the Daughters of the American Revolution
Westchester County Psychological Association
Scarsdale Family Counseling Service
National Organization of Women
Fox Meadow Association
University of Pennsylvania Westchester Alumni
Georgetown University Alumni
Merrill Lynch
Scarsdale Seniors
Animal Welfare League
Pasternack Securities Corp.
Mental Health Assoc. of Westchester
Bryn Mawr College Alumnae Club of Westchester
Brandeis University National Women's Committee
Calligraphy Guild
League of Women Voters
Center for Preventative Psychiatry
Westchester-Putnam Group of the Sierra Club
Westchester Smith Club
Student/Alumni Assoc. of Empire State College
Thomson McKinnon Securities, Inc.
Alliance Francaise of Westchester, Inc.
The Broadway Workshop

The Village has been aware that the Scarsdale Public Library permits access to and use of the Library "Scott Room" and other rooms in the Library by individuals and groups for the purpose of exhibiting and displaying articles of an artistic, scientific, literary, civic, cultural, religious or educational

nature. Among the articles which groups have been permitted to exhibit and display in the Library are books, miniature military figures, "Tramp Art", Santa Claus dolls from around the world, rare stamps and Hanukah menorahs.

69. Prior to the December 1982 meeting Mayor Stone received a letter from Dorothy S. Patterson, a former resident of Scarsdale dated November 20, 1982 which is Ex. 82. This letter deals with Wayside Cottage and the Scarsdale Public Library in the context of the Creche Committee's creche and indicates it was copied to the Board of Trustees. Memoranda to the Village Manager from John F. Holden, Jr. and Richard J. Rohan concerning the subject are Ex. 83.

70. For many years, the Village has permitted access to and use of Butler Field, Davis Park, Crossway Field and Greenacres Field by the Greenacres Association, the Arthur Manor Community Association and the East Scarsdale Association for the purpose of holding Fourth of July celebrations which have traditionally included fireworks, parades and speeches.

71. For many years, the Village has permitted access to and use of Butler Field by the Town Club for the purpose of presenting its annual "Music on the Green" concert.

72. For many years, the Village has permitted access to and use of several of Scarsdale's parks and streets by local churches and neighborhood associations, for the purpose of holding church picnics and block parties. For example, Crossway Field has been used for picnics by the Congregational Church, the Hitchcock Presbyterian Church, the Scarsdale Synagogue Youth Group and the Mormon Church. Immaculate Heart of Mary Church and St. Pius X have had block parties and streets closed for social affairs. No church or neighborhood association has applied for permission to use Boniface Circle for these purposes.

73. In 1958, the Board considered the first request of the American Red Cross for permission to erect 3 wooden crosses at Depot Plaza, Boniface Circle and the small island at Drake, Heathcote and Post Roads.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

"RESOLVED: that the American Red Cross is hereby authorized to place a cross as described in the communication dated February 9, 1958, in the island at Depot Plaza, subject to the approval of the Village Manager and Without floodlights. The Village Clerk was requested to inform the American Red Cross that the Board felt that it could not grant permission for the erection of crosses at the other two locations since it would set a precedent and requests from similar organizations could not reasonably be denied." (Ex. 84).

74. In each of the years 1958 to 1973, 1975, 1977 and 1978, the Red Cross applied for access to and use of Depot Plaza, Village-owned property near the Railroad Station, or the Popham Road Bridge, for the purpose of calling public attention to the Red Cross's annual fund drive in March. The Board granted these applications. The Red Cross's use of Village-owned property included the erection of red wooden crosses and Red Cross banners. In each of the years 1958 to 1961, the Red Cross was permitted to erect and display its red wooden cross for two weeks. In each of the years 1962 to 1973, 1977 and 1978, the Red Cross was permitted to erect and display its red wooden cross for one month. In 1975, the Red Cross was permitted to display its banner for one month. (Ex. 84).

75. In each of the years 1955 to 1959, 1961 to 1965 and 1968 to 1982, the Scarsdale Art Association applied for access to and use of Chase Park for the purpose of exhibiting paintings, sculpture and other works of art. The Board granted these applications. (Ex. 85).

76. In 1959, the Scarsdale Art Association requested permission for their art show at Chase Park and to set up easels at Boniface Circle for a one-day period. The Board of Trustees granted permission for the art show in Chase Park. (Ex. 85).

77. In each of the years 1972 to 1978, 1980 and 1982, the American Field Service (the "A.F.S") applied for access to and use of Chase Park, for the purpose of calling public

attention to and raising money for the A.F.S.'s sponsorship of foreign exchange students. The Board granted these applications. The A.F.S.'s use of Chase Park included pumpkin sales and the erection of banners to advertise the pumpkin sales. (Ex. 86).

78. In 1971, the A.F.S. of the Scarsdale High School applied for access to and use of Boniface Circle for the purpose of holding a baked goods sale, a student boutique and an art show for one day. The Board of Trustees granted this application. (Ex. 87).

79. In 1972, the A.F.S. requested permission to have a carnival in Boniface Circle. "The Mayor stated that the Board has considered this request and is of the opinion that because of shopping, parking, traffic, etc. it is not possible to authorize use of Boniface Circle." (Ex. 86).

80. In each of the years 1963, 1965 to 1967, 1970 to 1976 and 1980 to 1982, the Boy Scouts applied for access to and use of Chase Park for the purpose of calling public attention to the ability of the Scouts to take care of themselves when camping. The Board granted these applications. The Boy Scouts' use of Chase Park included the erection of tents, signal towers, and stoves. In addition, the Boy Scouts were permitted to set up informational stations to demonstrate first aid, rope-lashing, knot-making, cooking, tower building, bridge building, cardio-pulmonary resuscitation and bandaging. (Ex. 88).

81. In 1957, the Girl Scouts had requested permission to conduct a baked goods sale in Boniface Circle. The Board passed a resolution granting permission to the Girl Scouts to use Chase Road for its baked goods sale based on the Mayor's suggestion that the Village-owned lot on Chase Road might be a safer place. (Ex. 89).

82. In 1959 and 1974, the Girl Scouts applied for access to and use of Chase Park for the purpose of calling public attention to and raising funds for the Girl Scouts' programs. The Board granted these applications. The Girl Scouts' use of Chase Park included bake sales and a demonstration of a typical Scout patrol encampment and the erection of tents and outdoor kitchens. (Ex. 90).

83. In 1975 and 1976, the Salvation Army applied for permission to park its Emergency Disaster Mobile Canteen at Depot Plaza, for the purpose of calling public attention to and raising funds for the Salvation Army's annual Tag Day programs. The Board granted the applications. (Ex. 91).

84. On May 8, 1956, the Board granted permission to the Reconstructionist Synagogue of Westchester to use the Crossway Firehouse for the purpose of conducting worship services on the following dates for the times indicated:

Tuesday, September 4—6:00 p.m. to 8:00 p.m.
Wednesday, September 5—9:00 a.m.to 2:00 p.m.
6:00 p.m.to 8:00 p.m.
Tuesday, September 6—9:00 a.m. to 2:00 p.m.
Friday, September 14—6:00 p.m. to 10:00 p.m.
Saturday, September 15—9:00 a.m. to 7:00 p.m.
(Ex. 92).

85. On September 27, 1960, the Senior High Youth Fellowship of the Scarsdale Community Baptist Church applied for permission to use Chase Park for a baked goods sale, for the purpose of calling public attention to and raising funds for the International Christian Youth Exchange Programs' sponsorship of a German exchange student. The Board granted the application. (Ex. 93).

86. In 1961, the Westchester Cancer Committee requested permission for "a five foot sword to be placed in the circle area of the lower Scarsdale Station (where the Red Cross now stands) and another such sword to be placed in Boniface Circle". The following resolution was unanimously adopted by the Board:

"RESOLVED: That the Crusade for Cancer in Scarsdale is hereby authorized to place a 5 foot sword in the island at Depot Plaza for a period of 2 weeks during April, subject to the approval of the Village Manager."

(Ex. 94)

87. In 1961, the Scarsdale Community Fund requested permission to launch its annual drive by means of placing a facsimile of a rocketship at Boniface Circle and leaving it there for an 8-day period. The Board passed the following resolution:

"RESOLVED: that the Scarsdale Community Fund is hereby authorized to station a facsimile of a rocketship in the vicinity of the flag pole on Boniface Circle and to release a helium-filled balloon from the nose of said rocketship, on October 21st for the purpose of launching the 1961 Community Fund Drive, and be it

FURTHER RESOLVED: that the Community Fund is hereby authorized to thereafter place said rocketship in the island at Depot Plaza for the duration of the drive, October 21 through October 29, subject to the approval of the Village Manager and without flood lights."

(Ex. 95).

88. On March 10, 1964, the Board granted permission to the Wellesley Club to use Chase Park for three days in May 1964. (Ex. 96).

89. In 1966, the Greater Scarsdale United Fund requested permission to display a 4' x 8' sign in the Depot Plaza area, a sign in Boniface Circle and authorization to move the sign in Boniface Circle to the Village-owned property on the East side of Post Road to Mamaroneck Road from September 10 to October 31, 1966. On July 26, 1966, the Village Manager stated "no problem of one in Boniface Circle but that there would be considerable objection to one at Post and Mamaroneck Roads." The Board passed the following resolution:

"RESOLVED: that the Greater Scarsdale United Fund is hereby authorized to place a sign in the island at Depot Plaza as described in the communication dated July 19th, and be it

FURTHER RESOLVED: that the request for permission to place a similar sign in Boniface Circle and

authorization to remove such sign to the Village-owned property to the East side of Post Road at Mamaroneck Road is hereby referred to the Village Manager for report at a future meeting."

Thereafter, the Village Manager informed the United Fund that Depot Plaza had been approved and that other locations in the residential area of the Village had not been approved. The Village Manager suggested that he and the Fund get together to try and find one or two other locations in the business section of the Village. (Ex. 97).

90. On June 22, 1971, the Board granted permission to the sewing group of the Scarsdale Neighbors, a group of senior citizens, to use the Teen Center on Wayside Lane two mornings each month during the 1971-1972 school year, for the purpose of sewing for the Grasslands Hospital. (Ex. 98).

91. On October 9, 1973, the Senior Class of Scarsdale High School applied for permission to use Chase Park for a carnival for one day in October 1973, for the purpose of calling public attention to and raising funds for the A.F.S.'s sponsorship of foreign exchange students. The Board granted the application. (Ex. 99).

92. In 1974, a student from the Scarsdale High School requested the use of Boniface Circle for a craft sale to raise money for the High School literary magazine. "The Village Manager stated that Boniface Circle is a War Memorial and is mainly used for memorial occasions and services. He recommended the use of the Chase Road lot as an alternative location. The Mayor stated that the request would be denied and the alternate location of Chase Road offered." (Ex. 100).

93. In 1974 and 1976, the Board granted the applications of the Senior Class for permission to use the Scarsdale Municipal Swimming Pool complex for the Senior Class Graduation Breakfasts. (Ex. 101).

94. On July 23, 1974, the Board granted permission to the Street Theater, Inc. to use Chase Park during one day in August 1974, for the purpose of staging a play. (Ex. 102).

95. On October 22, 1974, the Uniformed Fire Fighters Association's "Burn Center Committee" applied for permission to use Chase Park for a baked goods and crafts sale for one day in November 1974, for the purpose of raising funds to build a burn center. The Board granted this application. (Ex. 103).

96. On April 22, 1975, the Board granted the application of the Scarsdale Clergy Association for permission to use Village streets for a walk for the hungry during one day in June 1975. (Ex. 104).

97. On April 26, 1977, the Board granted permission to the United Jewish Appeal-Federation of Jewish Philanthropies to use Village streets for a walk-a-thon during one day in May 1977. (Ex. 105).

98. On January 22, 1980, the Board granted permission to Paul Feiner to use the Village facilities at Village Hall for meetings to be held by the Ad Hoc Committee for a Choice and a Voice in Government. (Ex. 106).

99. In each of the years 1977 and 1980 to 1982, the Scarsdale Chamber of Commerce applied for permission to set up umbrellas and tables on the sidewalks in the Heathcote, central business district and Garth Road areas of the Village for the purpose of attracting the public to summer sidewalk sales. The Board granted these applications. (Ex. 107).

100. On June 23, 1981, the Association to Preserve the Hutch applied for permission to set up a table at the Scarsdale Municipal Swimming Pool complex on July 4, 1981, for the purpose of circulating petitions opposing the expansion and development of the Hutchinson River Parkway. The Board granted this application. (Ex. 108).

101. On May 11, 1982, the Scarsdale Interfaith Committee applied for permission to use Chase Park for a silent vigil during two days in June 1982, for the purpose of calling public attention to the Second Special Session on Disarmament at the United Nations and publicizing the Interfaith Committee's commitment to a mutual U.S.-Soviet nuclear arms race freeze. The Board granted the application. (Ex. 109).

102. On August 17, 1982, the Board granted the application of the Child Care Association of Scarsdale for permission to set up an information table at the Scarsdale Municipal Swimming Pool complex for any three days between August 21, 1982 and August 29, 1982. (Ex. 110).

103. For over sixty years, the government of the Village of Scarsdale has operated under a political system known as the Non-Partisan system in which the Citizens Party puts forth candidates for Trustees and Mayor.

104. Under the Non-Partisan system, the Citizens Party slate for Trustees and Mayor generally is not opposed. However, from time to time a group or an individual runs in opposition to the Citizens Party slate after obtaining necessary signatures of endorsement of residents for candidacy. No opposition candidate has ever been elected to office in Scarsdale.

105. In 1981, 1982, and 1983 there were contested elections. The candidates in each of these years and the election results are shown in the election reports attached as Ex. 111.

106. In the March 1982 election, Anita Resnick ran for Trustee as an Open Government Coalition candidate. In a campaign profile published in the Scarsdale Inquirer on February 18, 1982 (Ex. 112) Ms. Resnick stated that "she would have voted, as the majority of the Board did, not to permit [the creche] on public property".

Also in 1982, William Doescher ran for trustee as a Non-Partisan Open Government Coalition candidate. In his campaign profile in the Scarsdale Inquirer on February 25, 1983 (Ex. 113), Mr. Doescher stated that he would vote against having a creche on public property.

Matthew Callaghan, a candidate in 1982 from the Non-Partisan Open Government Coalition stated in his campaign profile in the Scarsdale Inquirer on March 4, 1982 (Ex. 114) that he was in favor of a creche on Boniface Circle.

The March 16, 1982 election results to select three Trustees were as follows:

For Trustee	Vote
Edward Falkenberg	2,304
William Glendon	2,326
Beatrice Underweiser	2,348
Matthew Callaghan	818
William Doescher	750
Anita Resnick	849

Edward Falkenberg served as trustee during 1981 and voted against the Creche display application in that year. William Glendon was a new candidate for trustee and his position on the Creche issue was not publicly known. Beatrice Underweiser served as trustee in 1980 and 1981 and voted against the Creche display application in each year.

In March, 1982 there were 10,085 registered voters in the Village of Scarsdale.

107. In the March, 1983 election Warren J. Grossman ran independently for office as trustee against three Citizens Party candidates. Mr. Grossman previously ran for office as trustee with two other persons in 1981 under a slate designated as the "Open Government Coalition".

108. In March, 1983, shortly before election day, Mr. Grossman appeared in a "Report Dispatch"[3] sponsored forum at the Scarsdale Public Library. His three Citizens Party opponents did not appear at this forum. Mr. Grossman spoke out on several issues which he believed should be addressed by the Village as described in Ex. 115. Mr. Grossman told residents in attendance that he believed the Scarsdale Creche Committee should be allowed to display its Nativity Scene in Boniface Circle during the Christmas season.

109. In the election of March 15, 1983, the Citizens Party candidates achieved what was described as a "landslide" victory in the March 17 edition of the Scarsdale Inquirer attached hereto as Ex. 116.

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3 The Daily Gannett Westchester County newspaper.

The March 15, 1983 election results to select a Mayor and three Trustees were as follows:

For Mayor	Vote
Seymour Sims (unopposed)	2,236
For Trustee	
Martin Bowen	2,041
Edward Hand	2,159
Evelyn Seidman	2,119
Warren Grossman	656

Seymour Sims served as Trustee from 1978 through 1980 and voted against the Creche display applications in each year. Martin Bowen served as Trustee in 1981 and 1982 and voted for Creche display applications in each year. Edward Hand and Evelyn Seidman were new candidates for Trustee and their position on the Creche issue was not publicly known.

In March, 1983, there were 10,085 registered voters in the Village of Scarsdale.

Dated: New York, New York
July 13, 1983

SIFF & NEWMAN, P.C.

By_____

233 Broadway
New York, NY 10279
(212) 349-3990

KRAMER, LEVIN, NESSEN,
KAMIN & FRANKEL

By_____

919 Third Avenue
New York, NY 10022
(212) 715-9100

Attorneys for Defendants

Marvin Schwartz

Sara Goodman
125 Broad Street
New York, NY 10004
(212) 558-4000

Attorneys for Plaintiffs
(83 Civ. 3266)

Vincent K. Gilmore

Michael J. Murphy
25 Broadway
New York, NY 10004
(212) 344-8480

Attorneys for Plaintiffs
(83 Civ. 0987)

JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KATHLEEN S. MCCREARY, ET AL
Plaintiffs

-against-

JEAN STONE, ET AL
Defendants

THE SCARSDALE CRECHE COMMITTEE, ET AL
Plaintiffs

-against-

THE VILLAGE OF SCARSDALE, ET ANO
Defendants

This consolidated action having been tried before the Honorable Charles E. Stewart, U.S.D.J. without a jury on July 20, 1983, and the record consisting exclusively of stipulations of fact, depositions, answers to interrogatories, and exhibits; and the Court having dismissed the damage claims against the four individually named defendants, and insofar as they were no longer trustees, dismissed all equitable claims against the four individually named defendants, and insofar as they were no longer trustees, dismissed all equitable claims against defendants Stone and Brown; and at the conclusion of the trial the Court having reserved its decision as to the remaining defendants; and the Court thereafter on December 8, 1983, having handed down its Opinion (#55491), which constituted the Court's findings of fact and conclusions of law, granting judgment for the defendants in all respects, it is,

ORDERED, ADJUDGED AND DECREED: That this consolidated action be and it is hereby dismissed.

DATED: NEW YORK, N.Y.
December 15, 1983

/s/ RAYMOND F. BURGHARD
Clerk

[Board Minutes 10/8/57]

The Mayor referred the matter jointly to the Liaison Committee with the School Board and the Finance Committee.

The Liaison Committee was requested to consult with the School Board concerning the safety problems and the Finance Committee to consider the availability of Village funds for such a project.

The following communication was presented:

"Board of Trustees
Village Hall, Scarsdale, N.Y.

Dear Sirs:

For some time, it has been the desire of a number of Scarsdale citizens to have a Nativity Scene at Christmas time, in the center of Scarsdale.

Boniface Circle has been thought of as a suitable place for this expression of the real significance of Christmas time.

Before going ahead with any plans necessary for this project, we would like to make sure that the Board of Trustees will permit the placing of the "Nativity Scene" at Boniface Circle.

Yours very truly,
Dorothy R. Molloy (Signed)
(Mrs. David J. Molloy)"

Oct. 4, 1957.

After discussion, the Board agreed to permit the placing of a Nativity Scene in Boniface Circle as requested by Mrs. Molloy.

The following communication was presented:

RESOLUTION

"WHEREAS a proposal has been made to the Board of Trustees of this village that Gaylor Road be made into a one way street for vehicular traffic in a Southerly direction only, and

[Board Minutes 6/28/60]

construction, and we and our neighbors have all been most impressed with the Tuckahoe Construction Company.
The workmen have all been most courteous, considerate, and careful of residents and property. We have all been amazed at the speed of their progress.

Sincerely yours,

Agnes H. Evans (Signed)
(Mrs. Albert I. Evans, Jr.)"

The Mayor ordered the communication placed on file with thanks.

The following communication was presented:

June 28, 1960

The Village Board
Scarsdale, New York.

Attention: Mayor David B. Mathias

Gentlemen:

The Scarsdale Creche Committee, representing the following churches in the Scarsdale area:

St. James the Less
Scarsdale Baptist
Congregational
Our Lady of Fatima
I. H. M.
Grace Lutheran
Trinity Lutheran
Pope Pius X
Greenville Community
Hitchcock Presbyterian

respectfully request permission to erect its nativity scene at Boniface Circle in the village during the 1960 and 1961 Christmas season.

We are making this request early so that we may make the necessary preparations well in advance of the usually busy winter and Christmas season.

This committee received many communications last year from citizens of our village expressing their appreciation of the creche and expressing their hope that we would present it again this coming year.

It is with appreciation of permission granted in the past years that we again ask the Board to pass favorably on this request.

Respectfully yours,
SCARSDALE CRECHE COMMITTEE

By Dorothy a. Kinsella (Signed)
Co-chairman

Mrs. H. B. Kinsella
61 Edgemont Road
Scarsdale, N.Y.''

Dear Mrs. Slaner

The Mayor referred the matter to the Board as a Committee of the whole.

The following communication was presented:

June 17, 1960

''Mrs. Alfred P. Slaner
10 Normandy Lane
Scarsdale, New York

Dear Mrs. Slaner:

At the annual meeting of the Recreation Council on June 8, 1960, the Council's Planning Committee submitted a report on various aspects of its work throughout the year.

It was moved, seconded and passed that the report be accepted and that copies thereof be submitted to the Village Board. Accordingly, I am enclosinig 7 copies of this report herewith and I would appreciate your making distribution to your colleagues on the Board.

I am also enclosing as a matter of interest, 2 copies of the report submitted at this same meeting by our Program Scope

Committee on sports participation at the ScarsdaleHigh School.

Cordially yours,

SCARSDALE RECREATION COUNCIL

Hardy (signed)
G. Hardy Ropes
Chairman''

''REPORT ATTACHED''

The Mayor referred the matter to the Board as a Committee of the Whole. Village attorney that the title to the property is in the name of ''Edward Garfield and Barbara M. Garfield, his wife''.

There are no liens or encumbrances against the property.

Yours very truly

Edward Garfield (Signed)''

The Board considered the petition from the owners and tenants on Popham Road objecting to the elimination of parking spaces in front of their establishments, and after discussion took no action on the petition.

The Board considered the request of the Scarsdale Creche Committee for the use of Boniface Circle during the Christmas season, and postponed action for further consideration.

The Village Attorney presented the following report:

June 27, 1960

MEMO TO: MAYOR & MEMBERS OF THE BOARD OF TRUSTEES

FROM: RICHARD A. TILDEN
Village Attorney

Re: Acquisition of N.Y. Central property

At the Board's request I have been negotiating with New York Central for the acquisition of the parcels of land identified as Parcels Nos. 1, 2, 3 and 4 on the attached map. These parcels contain approximately 175,000 square feet and are presently assessed for approximately $200,000.

The original asking price of New York Central was $250,000. However, after a number of conferences at which former Mayor Ralph Keating played an important part, New York Central has offered to enter into an agreement with the Village under which it will stipulate to accept as an award in condemnation proceedings under which the Village would acquire title to the four parcels, the following:

1. A cash payment of $50,000.

[Board Minutes 9/13/60]

Mrs. Benjamin Kwitman, 7 Canterbury Road, presented and read the following communication:

AMERICAN JEWISH CONGRESS
11 William Street
White Plains, N.Y.

Sept. 13, 1960

" Scarsdale Village Board
Scarsdale, New York

Gentlemen:

It has been brought to the attention of the Scarsdale section of the American Jewish Congress that a request has been made of the Village Board for display of a religious scene in Boniface Circle at Christmas time. Although we have precedents for appealing to the Board on Constitutional grounds in defense of our position—that there be no religious display on public property—we prefer to appeal to the understanding of our neighbors. We, as members of the Jewish faith, find religious display natural and acceptable on Church property, but are distressed by them when they appear in a public place which is shared by all the residents of our community. As a further consideration for the Board in arriving at its decision, may we suggest that more people than ever before are concerned by the injection of religious matters in public affairs. The involvement of the whole nation during this election period in ques-

tions of Church and State and the separation of the two in the interest of all our citizens, of whatever religious pursuasion, makes this particularly important at this time.
We, therefore, respectfully urge that the Village Board safeguard the neighborly feeling in our community by arriving at a decision which will strengthen the American principle of separation of Church and State and the traditional spirit of harmony in our community.

Sincerely,

Ann Kwitman (Signed)
Mrs. Benj. Kwitman
Pres. of the Scarsdale Chapter"

The Acting Mayor referred the request to the Board as a Committee of the Whole.

Mr. Sandor Mark, President, West Quaker Ridge Association, requested the Board to restudy the lack of safety on Weaver Street, at the intersection of Hutchinson River Parkway, for school children crossing the intersection. He stated that the Association

* * * * * *

The Village Manager reported that in awarding the bid for a truck for the Waste Department on May 10, 1960, the low bidder, Edman Dodge, Inc., expected to have a turn-in truck, first, because the advertisement calling for bids so stated and, secondly while this was changed in the specifications when issued, the prospective bidder was shown, through a misunderstanding at the Waste Department, a truck to be taken in trade. He made his bid accordingly. He further reported that when the low bidder learned that he was to receive no turn-in on this item, he requested the Village to adjust his bid price by $190.00, the amount he would lose, allowing for no profit, if he did not receive a truck in trade. The Village Manager stated that after examination of the bidders' working sheets, he recommended authorizing an additional payment of $190.00 to Edman Dodge, Inc., and further stated that after such increase the latter would still be the low bidder.

After discussion, and upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that the proper Village officers are hereby authorized to pay Edman Dodge, Inc., 155 Grove Street, the sum of $190.00 in connection with the purchase of a 9,000 dump truck for the Waste Department at a bid price of $2,616, and the said additional amount to be charged to Waste Department—Account No. 125-300.

The Board considered the request of the Scarsdale Creche Committee.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas season of 1960.

Trustee Alden Smith presented the following ordinance and move its adoption, which motion was duly seconded by Trustee Slaner and said ordinance was adopted by the vote indicated:

"The Board of Trustees of the Village of Scarsdale Westchester County, New York, hereby ordains enacts and publishes as follow:

Section 1. Section 12-7-1 of the Scarsdale Village Code, adopted February 26, 1957, as amended, is hereby further amended to add at the end thereof a new subdivision numbered 16, reading as follows:

"16. Commercial art display studio."

Section 2. This ordinance shall take effect immediately.

Ayes:	Nays:	Absent:
Acting Mayor P. Smith	None	Mayor Mathias
Trustee Hunger		
Trustee Hofheimer		
Trustee Slaner		
Trustee A. Smith		
Trustee Rogers		

Trustee Alden Smith moved the adoption of the following resolution, which was duly seconded by Trustee Luella Slaner, and adopted by the vote indicated:

RESOLVED: that a copy of such ordinance be filed in the office of the Village Clerk and that the Village Clerk is hereby authorized and directed to enter the foregoing ordinance in the minutes and publish a notice setting forth the title and a brief description of the contents of said ordinance and a statement that a copy thereof is on record with the Village Clerk, in the "Scarsdale Inquirer" as required by local law.

Ayes:	Nays:	Absent:
Acting Mayor P. Smith	None	Mayor Mathias
Trustee Hunger		
Trustee Hofheimer		
Trustee Slaner		
Trustee A. Smith		
Trustee Rogers		

[Board Minutes 9/26/61]

has investigated the request of William Dahl for a bus franchise and recommends that the Board look with favor upon the application and call a public hearing in due course. The report was accepted by the Board.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that the section of the Village Board at its meeting on September 12, 1961, authorizing the Mayor to sign a contract with Anthony Perrotta & Sons, 53 Belmont Avenue, New Rochelle, for the construction of an easement sewer on Fairview Road is hereby rescinded because it has been determined that this work can be performed by Village forces.

The Village Clerk presented the report of the Scarsdale Fourth of July Celebration Committee, which was received and placed on file.

The Board considered the request from the Scarsdale Creche Committee for permission to place a creche in Boniface Circle during the 1961 Christmas season, which request has been under study by the Board as a Committee of the Whole.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted.

RESOLVED: that for the year 1961 permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas season, and be it

FURTHER RESOLVED: that the Mayor appoint a Special Committee of the Board Consisting of three trustees (one being designated by the Mayor, as Chairman) to study and report to the Board of Trustees prior to June 30, 1962, on the issue of granting permission to erect a creche on Boniface Circle in subsequent years; that such Special Committee be authorized and empowered but not directed 1) to appoint a Citizens' Committee to advise and assist in the preparation of such report, and 2) to solicit the different views of those in the Village who desired to make their views known.

The Chairman of the Finance Committee recommended certain changes in salaries and outlined to the Board his reasons therefor.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that effective September 1, 1961,the following salaries shall be in effect:
Village manager $18,500 per annum Allocated $12,500 to General Fund Account 31-100 and $6,000 to Water Fund Account, other General Salaries.
Meeting Adjourned

11:45 p.m.

Ethel M. Hyde, Village Clerk

[Board Minutes 10/10/61]

The Acting Mayor referred the matter to the Board as a Committee of the Whole.

* * * * * *

The following communication was presented:

October 9, 1961

The Village Board
Scarsdale, New York.

Attention: Mr. Smith

Gentlemen:

On behalf of the Scarsdale Creche Committee we wish to thank the Board for extending to us permission to erect the Nativity Scene in Boniface Circle this coming Christmas Season. Also we thank the Board for all courtesies extended to us and to our request.

We feel that the two resolutions passed in connection with the granting of our permission are fair and responsible, and it is our earnest hope that they will result in an equitable conclusion.

If the Board should desire any service which we might render, we will be most happy to cooperate in any way.

Respectfully yours,

Mrs. H. B. Kinsella (Signed)
Mrs. William B. Oakes (Signed)

Scarsdale Creche Committee

The Acting Mayor stated that the communication will be placed on file.

* * * * * *

The following communication was presented:

SECOR FARMS PROPERTY OWNERS
ASSOCIATION INC.
Scarsdale, New York

October 10, 1961

Mayor Alden Smith
Board of Trustees
Village Board
Scarsdale, New York

Gentlemen:

We wish to acknowledge the recent installations of various traffic control signs in the Secor Farms area of Scarsdale.

* * * * * *

[Board Minutes 6/28/62]

and directed to publish notice of such hearing in the Scarsdale Inquirer and post same as required by law describing the proposed change.

* * * * * *

Trustee Hobbs, Chairman, Recreation Committee, stated that Hartsdale and Edgemont have requested an extension of time to terminate their participation in the Recreation Department Program. She stated that they would like to have the basketball, baseball and softball programs terminated as of June 24th, 1963.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that the termination date for the participation of Greenville and Hartsdale in the Scarsdale baseball, basketball and softball program is hereby extended until June 24, 1963.

* * * * * *

Trustee Hunger reported that the Special Committee on the Christmas Creche has met with the people involved and with interested leaders of the National Council of Christians and Jews. He stated that the next step will be a meeting of all interested groups by private invitation, to explore the matter further. He stated that Doctor Giles, Professor at New York University, will be at the meeting, which is expected to be held in September. He stated that the Committee's report will have to be extended until October.

* * * * * *

Trustee Hobbs stated that the Committee recommends the request by the Friend's of the Scarsdale Parks, for permission to install benches on the Chase Road lots, should be denied.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

[Board Minutes 10/23/62]

Trustee Hunger presented the following communication:

October 22, 1962

The Village Board
Scarsdale, New York

Gentlemen:

Gentlemen:

The Scarsdale Creche Committee, representing the churches of

St. James the Less
Scarsdale Baptist
Scarsdale Congregational
Our Lady of Fatima
I. H. M.
Grace Lutheran
Pope Pius X
Greenville Community
Hitchcock Presbyterian

respectfully request permission to erect its Nativity Scene in Boniface Circle in the Village of Scarsdale during the Christmas Season of 1962 and 1963.

We will appreciate the careful consideration of the Board to this request.

Respectfully yours,

Scarsdale Creche Committee

By DOROTHY B. KINSELLA
Co-Chairman (signed)

CECEIL OAKES (signed)
Co-Chairman

Trustee Hunger, Chairman of a special committee, (Hunger, Hofheimer & Rogers) appointed by the Mayor to report to the Board regarding the use of Boniface Circle for a display of the Nativity Scene, reported that the Committee met with numerous interested groups during the summer which groups included the National Conference of Christians and Jews, American Jewish Congress, American Jewish Committee, the Scarsdale Creche Committee as well as a group meeting with representatives from the above organizations. He stated that the Committee members also discussed the matter with various interested community leaders, both clergy and laymen, and that pro and con legal opinions were considered as well as the memorandum from the Village Attorney, dated September 21, 1961 and August 17, 1962. He reported that it was the conclusion of the Committee that no change be made in the granting of permission for the use of Boniface Circle as requested by the Scarsdale Creche Committee.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that for the year 1962 permisssion is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas Season.

* * * * * *

Trustee Hofheimer reported on the use of the Crossway Fire House by a Girl Scout Group and stated that the Village Manager has reviewed the policy of the Village and discussed the problem.

[Board Minutes 1/15/63]
ONE THOUSAND AND THIRD REGULAR MEETING

Village Hall Annex
Scarsdale
January 15th 1963

A regular meeting of the Board of Trustees of the Village of Scarsdale was held at the Village Hall Annex on Tuesday evening, January 15, 1963, at 8:15 P.M., E.S.T. There were present Mayor Smith, Trustees Hobbs, Hofheimer and Wacht. Also, Village Manager Tooley, Assistant Village Manager Cordy, Village Attorney Tilden, Assistant to the Village Attorney Kelly, Village Treasurer Craw, Assistant to the Village Manager Foley and the Village Clerk. Absent—Trustees Atwood, Hunger and Rogers.

* * * * * *

The following communication was presented and read:

January 8th, 1963

"Village Board of Scarsdale
Post Road Village Hall
Scarsdale, New York

Gentlemen:

The Scarsdale Chapter of the American Jewish Congress, wishes to record again its protest against the display of a creche on Village property.

Since no explanation has been offered by the Village Board of its decision, many members of the Jewish community believe that their feelings in the matter have been disregarded. Because this is an area involving a great deal of emotion, we have suggested to the Village Board Sub-Committee that efforts be made to bring about mutual understanding by means of a program for community education. Such a program was tentatively discussed at our joint meeting with Dr. H. Harry Giles last Spring.

We trust that the Board will take up the question of a conference of community leaders as a first step in a community education program. The American Jewish Congress is ready to cooperate in whatever way may be deemed advisable.

Sincerely yours,

AUSTICE FREUDMANN (signed)
Mrs. Marcel Freudmann,
President''

The Mayor stated that the matter was fully explored by the committee appointed by the Board to handle the problem and a report was presented to the Board, after which a decision was unanimously taken. He stated that the Board will give the letter and request further consideration.

* * * * * *

The following communication was presented and read:

6 Oakstwain Road
Scarsdale, New York

January 14, 1963

''Hon. Alden C. Smith
Mayor, Village of Scarsdale
City Hall
Scarsdale, New York

Dear Mayor Smith:

The former Holmes property, on the corner of Oakstwain and Fenimore Roads, was subdivided and the house sold in the Fall of 1962. What is a beautiful lawn to this dignified old house is divided into two lots for sale at $21,500, valued together. A short time ago I was informed by Mr. Arja Adair, President of the Greenacres Association, and Mr. Edward S. Hand, President of the Friends of the Scarsdale Parks, that the Village is interested in preserving as much open space as possible. From an aesthetic standpoint this is certainly preferable to the sort of mutilation of an attractive plot of ground such as occurred at 15 Fenimore Road by the crowding together of houses. If two houses are built on the Holmes lots,

they would not only be crowded together, but several beautiful old trees would have to be sacrificed. Mr. Adair and Mr. Hand suggested that it might be worthwhile to explore the interest of the Village in acquiring the two lots still belonging to Mrs. Eleanor Holmes as an open park area. They felt that this might be possible on the basis of some modification of the plan by which the Scarsdale Lumber Company was acquired.

Acting on this suggestion, I called a meeting of the neighbors immediately adjacent to the Holmes property. A nuclear group of seven property owners would be willing to contribute approximately $9000 toward the acquisition of this property for the Village. It is our understanding that such contributions might be made over a period of twenty years, in yearly installments which would become a special tax lien against the property of those contributing. We also learned that there are probably other people who would be willing to make a single contribution toward such a project, so that any plan for the acquisition of the property should make it feasible to use either form of contribution. I have mentioned a nuclear group of seven. These are the people immediately contiguous to the Holmes lots. Other property owners, about five, on the block between Brewster Road and Brite Street, were unavailable at the time, and have not been approached, but might contribute. Two nearby houses have just been sold and it has not been possible to discuss the matter with the new owners as yet. Two other

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[Board Minutes 1/29/63]

that most of the accidents involved two cars. He stated that except for the month of December the accidents are usually occurring in clear, dry, weather under good driving conditions. He further stated that non-residents caused 100 more accidents than residents. He stated that all measures have been taken to decrease accidents and it would appear that there is

nothing further to be done by the Police Department.

* * * * * *

Trustee Hunger reported that the Public Safety Committee recommends a survey of the Fire and Police Departments and has contacted several agencies to make such a survey. He reported that it would seem to the committee that the survey be limited to three areas, the first to report on and make recommendations of the Police and Fire Departments. Second, to have the Village Manager's Office find someone to work specifically on the study and three, to have an expert hired on a weekly or monthly basis to advise in the areas for improvement and perhaps combination of the two departments.

After discussion, the Board agreed to discuss the matter further at the next meeting.

* * * * * *

Trustee Hunger reported that since receipt of the letter from the American Jewish Congress on the matter of the Creche in Boniface Circle, he had received a letter from the Chairman of the American Jewish Congress and from the Chairman of the American Jewish Committee, both requesting a meeting for clarification of various points including the matter of separation of church and state. He suggested that Dr. Giles be requested to conduct such a meeting between the representatives of these two organizations and the committee of the Board.

After discussion, it was the concensus of opinion that if the committee wishes to reconstitute itself and invite Dr. Giles to conduct a meeting on the Creche matter, the Board has no objection.

* * * * * *

Trustee Atwood reported in the matter of the possible acquisition of the Brissendon property adjacent to Hyatt Field, that the committee recommends the Village Attorney be authorized to contact Mr. Brissendon about a possible relocation of the right-of-way to his property.

After discussion, the Village Attorney was so authorized.

* * * * * *

Trustee Hobbs reported that the Edgemont section of Greenburgh would like reconsideration of Scarsdale's proposal to eliminate them from the Recreation Department's Program and stated that her committee will meet with representatives from Edgemont.

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Trustee Hobbs reported that in regard to the communication of the Westchester County Association asking the Board to write to the State Legislation supporting the establishing of a four-year college in Westchester, she has learned that if we do not wish to support it, they are not interested in our views. She stated that she had discussed the matter with John Gardiner, President of the Carnegie Foundation and he seems to feel that as long as a four-year college is to be built, it might as well be built in Westchester and it should be supported. She stated she had also consulted with Supervisor Berle, who would prefer to see the same amount of money put into the extension of the present two-year college.

After discussion, the Board took no action in the matter.

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Trustee Hobbs reported that Miss Helen Hult, a fourth grade teacher in the Edgewood Grammar School, collaborating with Mrs. Brooking

[Board Minutes 2/12/63]
TREASURER'S PAYROLL AND PETTY CASH ACCOUNT
JANUARY, 1963

Hway Payroll Wk.End. 1/2/63	$ 4,477.49
State of New York	5.00
John J. Doyle	13.55
Waste Payroll-Wk.End. 1/4/63	5,382.12
Postmaster, Scarsdale, N.Y.	27.00
Postmaster, Scarsdale, N.Y.	10.00
Hway. Payroll - Wk.End. 1/9/63	3,616.26
Waste Payroll - Wk.End. 1/11/63	4,977.32
Payroll Period 1/1 - 1/15/63	32,913.23
Sch.Cr.Gds. Payroll Per 1/1-1/15/63	1,959.57
Sch.Cr.Gds. Payroll P/T 1/1-1/15/63	665.00
Postmaster, Scarsdale, N. Y.	45.00
Library Payroll-Period 1/1-1/15/63	3,120.21
Hway. Payroll Wk.End. 1/16/63	3,784.06
Waste Payroll-Wk.End. 1/18/63	4,699.80
Municipal Finance Offices Assn.	1.70
Hway.Payroll-Wk.End. 1/23/63	4, 123.02
Waste Payroll-Wk.End. 1/25/63	4,703.12
Postmaster, Scarsdale, N.Y.	500.00

Payroll Period 1/16-1/31/63	37,284.78
Sch.Cr.Gds. Payroll Per. 1/16-1/31/63	2,180.89
Sch.Cr.Gds. Payroll P/T- 1/16-1/31/63	665.00
Library Payroll-Period 1/16-1/31/63	3,246.92
John J. Doyle	22.80
Scarsdale Diner	22.50
Assoc. Hosp. Serv. of N.Y.	2,672.36
Cash for Petty Cash - January	51.47
Assoc. Hosp. Serv. of N.Y. - Library	58.12
	$121,228.29

WATER DEPARTMENT

Payroll-Wk.End. 1/4/63	$ 964.96
Postmaster, Scarsdale, N.Y. - 1¢ stamps	68.50
Payroll-Wk.End. 1/11/63	961.40
Payroll Period 1/1-1/15/63	1,667.77
Payroll-Wk.End. 1/18/63	1,105.63
Payroll-Wk.End. 1/25/63	1,108.60
Payroll Period 1/16-1/31/63	2,042.76
Assoc. Hosp. Serv. of N.Y.-Water	189.80
Postmaster, Scarsdale, N.Y. - 2/1 Bills	176.40
	$ 8,285.82

* * * * * *

The Board then went into executive session, and upon arising and resuming the public session, Trustee Hunger stated that the Creche Committee has considered the request of the American Jewish Congress that the Village organize and help sponsor a meeting. He stated that it is the committee's recommendation that the Creche Committee be authorized to proceed to organize a meeting that will be free of the press, limited to twenty people and presided over by Dr. Giles.

After discussion, the Board agreed to the recommendation.

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Trustee Hunger read letters of commendation to the Police Department from the following: Mercedes and Dick Reeves; Mrs. Grace McIvers, School Nurse, Junior High School; Dr. Hans Abeles, 175 East 79th St., New York City; Dr. Alvab M. Weiss, 10 Nosband Ave., White Plains, New York; Mr. and Mrs. Donald Yarkin, 33 Vernon Road; Deputy Chief Louis Satriale of the Mount Vernon Volunteer Fire Department; Adele Brody, 119 Walworth Ave and Elinor G. Smith, 17 School Lane.

Trustee Hunger reported that the increased accident rate is due to bad weather and the increase in traffic passing through the Village.

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Trustee Hunger presented and read the following communication:

February 9, 1963

Scarsdale Police
Benevolent Assoc.

"Mayor Alden C. Smith
11 Carstensen Road
Scarsdale, New York

Att: SCARSDALE VILLAGE BOARD

Dear Mayor,

On January 21, 1963, the Scarsdale Police Benevolent Association held their meeting at Police Headquarters and voted that the following requests be considered by the Village Board to be adopted into the 1963-'64 budget.

1) Eight (8) percent increase in pay for all grades.
2) Twenty Five year retirement for the Police Department.

It is the feeling of this organization that these requests are justified as it will place your Police Deparment on a par with the police of area municipalities.

[Board Minutes 4/9/63]

The Village Clerk presented the 1961 study of market values in Scarsdale by the State Board of Equalization and Assessment and reported that the State Board will meet with Town and Village officials on Wednesday, April 17th at 10:00 A.M. to discuss the survey.

* * * * * *

The Village Clerk presented a notice from the Westchester County Tax Commission that it will hold a hearing at the Village Hall on the 3rd day of May, 1963 at 1:30 P.M. on the standards employed for the assessment of real properties in Scarsdale. She stated that this meeting is held each year and any member of the Board who wishes may attend the meeting.

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The Village Clerk reported that the certificate of final railroad ceiling for the assessment roll filed in 1963 has been received and the ceiling fixed at $219,722. for the New York Central Railroad.

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The Board then went into executive session, and upon arising and resuming the public session, Trustee Hofheimer reported that as authorized by the Board, the reconstituted

Creche Committee requested Dr. Giles, a Professor at N.Y.U. in the field of human relations, to conduct an informal meeting for the clarification of various points of disagreement on the location of a Christmas Creche in Boniface Circle. He stated that, at the request of Dr. Giles representatives of the most divergent views were invited, almost all attended or sent a substitute and the meeting was held on March 28th at the firehouse. He stated that Dr. Giles has the ability to get people to express what they feel without hurting feelings and there was a very free exchange of opinion. He further reported that although the meeting did not result in any conclusions and was not expected to, it brought a better understanding of opposing views. He further reported that although no further meetings were scheduled, they may be held under the auspices of the National Council of Christians and Jews but, as far as the Board is concerned, the Committee feels its obligation has been fulfilled to keep things on a non-emotional basis.

* * * * * *

Trustee Allen reported that the Public Property Committee has studied the matter of repairs to the station building and presented the following resolution which upon motion duly made and seconded was unanimously adopted:

RESOLVED: that the Village should take care of the following repairs:

1. Leaks in the roof.
2. New screens in the toilet room window frames.
3. Replacement and painting of rotted exterior wood trim.
4. Paint West Wall rain water conductor.

and be it

FURTHER RESOLVED: that the Village should discuss with the Railroad the possibility of the Railroad considering the repairs as outlined in the Town Club report perhaps in conjunction with the subtenant in the North end of the building, including, but not necessarily limited to electric light fixtures, linoleum, plumbing fixtures and improvements to the heating system, and be it

FURTHER RESOLVED: that the Village request the Railroad to improve its cleaning procedures in general and toilet room in particular, perhaps by means of a commercial cleaning service.

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[Board Minutes 11/12/63]

The Clerk presented and read the following communication:

November 22, 1963

"The Village Board
Scarsdale, New York.

Attention: Mayor Ralph K. Rogers

Gentlemen:

The Scarsdale Creche Committee, representing the churches of

St. James the Less
Scarsdale Baptist
Scarsdale Congregational
Our Lady of Fatima
I.H.M.
Pope Pius X
Grace Lutheran
Trinity Lutheran
Greenville Community
Hitchcock Presbyterian

respectfully request the permission to erect its Nativity Scene in Boniface Circle in the Village of Scarsdale during the Christmas Season of 1963 and 1964.

It is the prayerful hope that this permission will be again forthcoming, not only by the Creche Committee but by many citizens of Scarsdale to whom the Creche has become increasingly important and increasingly valued as part of Christmas observance in Scarsdale.

Respectfully yours,

BY DOROTHY B. KINSELLA
(signed)
BY CECEILA I. OAKES
(signed)
Co-Chairman''

The Mayor referred the matter to the Board as a Committee of the Whole.

* * * * * *

The Village Clerk presented and read a communication from George W. Wilson, 56 Tunstall Road requesting the Board to submit the question of whether the Chase Road lots should be preserved as a park or turned into a parking lot, to the qualified voters of the Village.

The communication was referred to the Master Plan Committee Fund—Drainage Improvements, Account #5890-201, and be it,

FURTHER RESOLVED: that the Planning Commission is hereby requested to review the traffic and drainage problems in connection with said lot and to present to the Board its recommendations with respect to the manner in which the above purposes can be accomplished, including the portion of the lot which can be developed for use for one one-family dwelling.

AYES	NAYS	ABSENT
Trustee Atwood	Trustree Allen	Trustee Hobbs
Trustee Rutherford	Trustee Hofheimer	
Trustee Wacht		
Mayor Rogers		

The Engineering Department was requested to make a report, after consultation with the County, on the matter in which to improve the safety factors and traffic hazards at the corner of Murray Hill Road and Post Road.

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The Board discussed the request of the Scarsdale Creche Committee to place a Creche in Boniface Circle during the Christmas holidays and the matter was referred to the Law Committee for report at the next meeting.

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Trustee Hofheimer reported that the case of Labriola against the Village of Scarsdale in the matter of the construction of Brewster Road has been settled, but all of the formalities have not been completed and he will have a full report at the next meeting.

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The Village Attorney reported that in the matter of the exchange of land with the County of Westchester, certain minor

[Board Minutes 11/26/63]
1963 regarding the control of dutch elm disease. He stated that the Law Committee recommends the suggestions of the Village Attorney be put into effect.

After discussion, if was agreed that the matter would be held over until the next meeting to give an opportunity to all members of the Board to study the memorandum.

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Trustee Hofheimer reported that the Law Committee is still studying the matter of an Architectural Review Board for the

Village of Scarsdale.

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Trustee Hofheimer reported that the Law Committee recommends that the request of the Scarsdale Creche Committee for permission to erect a creche in Boniface Circle be granted.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that for the year 1963 permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas Season.

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The Village Attorney reported that judgment has been entered against the Village of Scarsdale in the case of Labriola Construction Corporation regarding the Brewster Road relocation, in the sum of $76,562.09 without interest and cost provided the amount is paid within 30 days from November 4, 1963.

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that the Village Treasurer is hereby authorized to pay the sum of $76,562.09 to Labriola Construction Corporation in payment of the judgment entered on the 4th day of November, 1963 by the Honorable Gerald Nolan, Justice,

[Board Minutes 12/8/64]
to present their views.
The Mayor referred the matter to the Public Property Committee.

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The Village Clerk read a communication from Stuart B. Glover transmitting the interim report fo the Recreation Council to the Board.

The Mayor referred the report to the Recreation Committee.

Trustee Hobbs expressed appreciation to the Recreation Council for the report.

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The Village Clerk presented and read a communication from Seymour L. Mantell, 47 Fenimore Road, requesting the Village to institute a bicycle program through the Police Department which would provide for instruction in safety rules, a road test, bicycle inspection, identification and license, with penalties for violation of safety and non-licensing.

The Mayor referred the matter to the Public Safety Committee.

* * * * * *

The Village Clerk presented and read the following communciation:

November 24, 1964

"The Village Board
Scarsdale, New York

Attention: Mayor Ralph K. Rogers

Gentlemen:

The Scarsdale Creche Committee, representing the churches of

St. James the Less
Scarsdale Baptist
Scarsdale Congregational
Our Lady of Fatima
Immaculate Heart of Mary
Pope Pius X
Trinity Lutheran Church
Grace Lutheran Church
Greenville Community
Hitchcock Presbyterian

respectfully request permission to erect its Nativity Scene in Boniface Circle in the Village of Scarsdale during the Christmas Season of 1964 and 1965.

In the celebration of Christmas with its many varied customs throughout the Village, it is our earnest hope that our Creche will again be included as a part of the general observance.

We will appreciate deeply your granting of this request.

Respectfully yours,

SCARSDALE CRECHE COMMITTEE

BY DOROTHY B. KINSELLA (signed)
Co-Chairman

BY CECEILA I. OAKES (signed)
Co-Chairman

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that for the year 1964 permission is hereby granted to the Scarsdale Creche committee to place a Nativity Scene in Boniface Circle during the Christmas Season.

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The Village Clerk presented and read a communication from Mrs. Nan M. Shapiro, Village Board Liaison Representative, Heathcote Parent-Teacher Association, thanking Mr. Tilden and the Village Board for the Prompt and effective solution to the advertisement for guns appearing in the Junior Scholastic Magazine.

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The Village Clerk presented and read a communication from Mrs. Carl S. Rowe, 175 Brewster Road, informing the Board that Gristede's Store on Garth Road near Popham Road was closed because of its poor location in relation to the apartments and

[Board Minutes 11/22/66]

November 17, 1966

The Village Board
Scarsdale, New York

Gentlemen:

The Scarsdale Creche Committee, representing the churches of

St. James the Less
Scarsdale Congregation
Scarsdale Baptist
Our Lady of Fatima
Immaculate Heart of Mary
Pope Pius X
Trinity Lutheran
Grace Lutheran
Greenville Community
Hitchcock Memorial

respectfully request permission to erect its nativity scene in Boniface Circle in the Village of Scarsdale during the approaching Christmas Season.

The Creche Committee is deeply appreciative of permission given to us in previous years. We thank you for this permission, and weagain are hoping that the Board may grant our request.

Respectfully yours,

SCARSDALE CRECHE COMMITTEE

BY_____
Co-Chairman

_____
Co-Chairman

[Board Minutes 11/22/66]
VILLAGE BOARD MEETING

November 22, 1966

A regular meeting of the Board of Trustees of the Village of Scarsdale was held at the Village Hall Annex on Tuesday evening, November 22, 1966, at 8:15 P.M., E.S.T. There were present Mayor MacIntyre, Trustees Delany, Dyson, Horowitz and Stix. Also, Village Attorney Tilden and the Deputy Village Clerk.

Absent — Trustee Allen and the Village Clerk.

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Mayor: Public hearing on a change covering the appointment of police officers, appointments to be be made directly by the Village Manager. Unless the Trustees so desire we will dispense with the reading of the legal notice. Any written communications? Any oral communications?

Delany: I move the adoption of the amendment to Local Law No. 1 of 1949.

Dyson: Second.

Mayor: Any discussion?

Roll call vote — all ayes.

Horowitz: Ratify the actions of the Village Manager on the appointment of offices prior to this time.

Delany: Move that the Board ratify and confirm all officers.

Dyson: Second.

* * * * * *

Mayor: Any written communications?

Deputy Clerk: Communication from the Scarsdale Creche Committee requesting permission to erect creche in Boniface Circle for 1966.

Mayor: Does the Village Attorney hold this use legal?

Tilden: Yes.

* * * * * *

The question was taken upon the foregoing Local Law which was adopted by the following vote:

AYES:	NAYS:	ABSENT:
Mayor MacIntyre	None	Trustee Allen
Trustee Delany		
Trustee Dyson		
Trustee Horowitz		
Trustee Stix		

Trustee Delany moved the adoption of the following resolution, which was seconded by Trustee Dyson:

RESOLVED: that the Village Clerk is hereby authorized and directed to file within five days after adoption, three certified copies thereof in the office of the Secretary of State and one copy in the office of the State Comptroller.

The question was taken on the foregoing resolution, which was adopted by the following vote:

AYES:	NAYS:	ABSENT:
Mayor MacIntyre	None	Trustee Allen
Trustee Delany		
Trustee Dyson		
Trustee Horowitz		
Trustee Stix		

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that the Board hereby ratifies and confirms all appointments of police officers of the Village of Scarsdale made by the Village Manager on or after March 8, 1949.

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The Deputy Clerk presented a communication from the Scarsdale Creche Committee requesting permission to erect a creche in Boniface Circle for 1966.

The Mayor held the matter over for discussion in executive session.

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the 1966 Village assessment roll which has been set at 44 and stated this proposed rate is the same as last year.

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The Board then went into executive session at 10:00 P.M., and after arising and resuming the open session and after discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that this Board, in behalf of the Village of Scarsdale, welcomes all good neighbors, regardless of race, creed, color or national origin and urges all citizens to support the principle of open housing.

* * * * * *

After discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that for the year 1966 permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas Season.

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The Deputy Clerk presented the papers in the matter of discipline proceedings against George Tobin, Police Officer, together with a communication from Patrolman Tobin requesting a Leave of Absence from November 22, 1966 to January 10, 1967 and adjournment of the hearing until January 10th.

November 16, 1973

The Village Board
Scarsdale, New York

Gentlemen:

The Scarsdale Creche Committee, representing the churches of:

St. James the Less
Scarsdale Baptist
Scarsdale Congregational
Our Lady of Fatima
Immaculate Heart of Mary
Church of St. Pius X
Grace Lutheran
Trinity Lutheran
Redeemer Lutheran
Greenville Community
Hitchcock Presbyterian

respectfully request permission to erect its Nativity Scene in Boniface Circle in the Village of Scarsdale during the Christmas Season of this year.

It is with a deep feeling of gratitude that we have been granted this permission for over a decade now, and would deeply appreciate it if you will again grant our request.

Respectfully submitted,

Scarsdale Creche Committee

By_____
Co-Chairman

By_____
Co-Chairman

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that for the year 1973 permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas Season.

[Board Minutes 11/27/73]

Clerk: Communications favoring the Board's proposal from the Friends of Scarsdale Parks, S.N.A.P., League of Women Voters and from the following residents:

Deborah West Zipf, 22 Gorham Rd.
The Vallet Family
Carol and Norman Comerance, 49 Lawrence Rd.
Paul D. Spindel

Mayor: The written communications will be noted and made a part of the record. Any oral communications? I declare the hearing closed.

Heming: I believe all the Trustees have in front of them a proposed Local Law #1 and proposed Local #2. I propose that the two laws be enacted.

Roll call vote on Local Law #1 - all ayes
Roll call vote on Local Law #2 - all ayes

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Mayor: We now come to written communications.

Clerk: Communication from the Scarsdale Creche Committee requesting permission to erect a Nativity Scene during the Christmas season this year.

Mrs. Hackett: Move permission be granted.

Szabad: I am going to abstain from voting because I think there should be a clear-cut separation between church and state.

Mayor: Trustee Szabad's comments will be noted in the record.

All ayes - Trustee Szabad abstaining.

Mayor: Will the Clerk please notify the Creche Committee.

* * * * * *

Clerk: Communication from Richard F. Balzac requesting the use of the four paddle tennis courts on Brite Ave. on Saturday, January 19th from 8:30 A.M. to 1 P.M. for the Annual Jambles Tournament.

Johnson: For some time we have worked in cooperation with the Fox Meadow Club. As you know we use the Fox Meadow courts for the tournament during the summer. The Recreation Committee and the Recreation Dept.

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to the point and place of beginning." Said property being designated on the Tax Assessment Map of the Village of Scarsdale as Section 2, Block 4, Lot 1A and Right-of-way.

2. This Local Law shall be effective immediately.

The question was taken upon the foregoing Local Law which was adopted by the following vote:

AYES:	NAYS:	ABSENT:
Mayor Steyer	None	None
Trustee Finney		
Trustee Hackett		
Trustee Heming		
Trustee Hodges		
Trustee Johnson		
Trustee Szabad		

Trustee Heming moved the adoption of the following resolution, which was seconded by Trustee Finney:

RESOLVED: that the Village Clerk is hereby authorized and directed to file within five days after said Local Law takes effect, three certified copies thereof in the office of the Secretary of State and one copy in the office of the State Comptroller.

The question was taken on the foregoing resolution, which was adopted by the following vote:

AYES:	NAYS:	ABSENT:
Mayor Steyer	None	None
Trustee Finney		
Trustee Hackett		
Trustee Heming		
Trustee Hodges		
Trustee Johnson		
Trustee Szabad		

* * * * * *

The Village Clerk presented a communication from the Scarsdale Creche Committee requesting permission to erect a Nativity Scene in Boniface Circle during the Christmas season this year.

Upon motion duly made and seconded, the following resolution was adopted, Trustee Szabad abstaining:

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RESOLVED: that for the year 1973 permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas Season.

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The Village Clerk presented a communication from Richard F. Balzac requesting the use of the four paddle tennis courts on Brite Avenue on Saturday, January 19, 1974 from 8:30 A.M. to 1:00 P.M. for the Annual Jambles Tournament of the Fox Meadow Tennis Club.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED: that the Fox Meadow Tennis Club is hereby authorized to use the four paddle tennis courts on Brite Avenue on Saturday, January 19, 1974 from 8:30 A.M. to 1:00 P.M. for the Club's "Jambles".

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The Village Clerk presented a communication from Stafan Priestley calling attention to the concern of the residents on the volume and speed of traffic using Autenrieth Road and offering suggestions to correct the matter.

The Mayor referred the matter to the Police Commissioner and the Village Manager.

* * * * * *

Trustee Finney stated that the Scarsdale Volunteer Ambulance Corps believes it can be of greater service than it has been called upon to provide and if they were called upon more often they would be able to attract more volunteers. He stated that discussions will be carried on with the Police and Fire Departments but as yet no program has been formulated.

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The Mayor announced again that during the month of December

[Board Minutes 11/26/74]

November 16, 1974

The Village Board
Scarsdale, N.Y.

Gentlemen:

The Scarsdale Creche Committee, representing the following churches:

St. James the Less
Scarsdale Baptist
Scarsdale Congregational
Our Lady of Fatima
Church of St. Pius X
Immaculate Heart of Mary
Grace Lutheran
Trinity Lutheran
Redeemer Lutheran
Greenville Community
Hitchcock Presbyterian

respectfully request permission to erect its Nativity Scene at Boniface Circle in the Village of Scarsdale, during the Christmas Season of this year. We appreciate the permission you have granted to us these past many years and will apprciate again, your permission to us to again erect our Creche.

Respectfully submitted,
Scarsdale Creche Committeee

By__ _____
Co-Chairman

By_____
Co-Chairman

[Board Minutes 11/26/74]
VILLAGE BOARD MEETING

November 26, 1974

A regular meeting of the Board of Trustees of the Village of Scarsdale was held in Rutherford Hall in the Village Hall on Tuesday evening, November 26, 1974, at 8:15 P.M., E.S.T. There were present Mayor Steyer, Trustees Brennan, Heming, Hodges, Johnson and Szabad. Also the Village Clerk, Deputy Village Clerk, Village Attorney, Village Treasurer, Deputy Village Treasurer, Village Manager, Assistant Village Manger and the Assistant to the Village Manager.

Absent - Trustee Kahn.

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Mayor: Some of the residents who attend our meetings have been having difficulty hearing. If any of you are having trouble will you move forward instead of our turning on the address system.

* * * * * *

Dep. Vill. Clerk: Communication from the Scarsdale Creche Committee requesting permission for Nativity Scene in Boniface Circle.

Johnson: Move resolution.

Hodges: Second

Szabad: I am abstaining. I believe it is unconstitutional and not correct separation of Church and State. At the same time I believe there will be more harm done than good by denying the application but I cannot vote for it.

Mayor: The resolution is attached to the request and it will be granted.

* * * * * *

Dep. Vill. Clerk: Communication from the Scarsdale Garden Club Section of the Scarsdale Woman's Club urging the Village to improve its inspection of the valuable and beautiful trees in the Village.

Mayor: The letter will be filed. Trustee Szabad will make a report on the question of the Village's policy on trees.

[Board Minutes 11/26/74]
ONE THOUSAND TWO HUNDRED SIXTIETH REGULAR MEETING

Rutherford Hall
Village Hall
Scarsdale
November 26, 1974

A regular meeting of the Board of Trustees of the Village of Scarsdale was held in Rutherford Hall in the Village Hall on Tuesday evening, November 26, 1974, at 8:15 P.M., E.S.T. There were present Mayor Steyer, Trustees Brennan, Heming, Hodges, Johnson and Szabad. Also the Village Clerk, Deputy Village Clerk, Village Attorney, Village Treasurer, Deputy Village Treasurer, Village Manager, Assitant Village Manager and the Assitant to the Village Manager.

Absent - Trustee Kahn.

* * * * * *

The Deputy Village Clerk presented a communication from the Scarsdale Creche Committee requesting permission to erect a Nativity Scene in Boniface Circle during the Christmas Season.

Upon motion duly made and seconded, the following resolution was adopted, Trustee Szabad abstaining:

RESOLVED: that for the year 1974 permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas Season.

* * * * * *

The Deputy Village Clerk presented a communicatioin from the Scarsdale Garden Club Section of the Scarsdale Woman's Club urging the Village to improve its inspection of valuable and beautiful trees in the Village.

The Mayor stated that Trustee Szabad will make a report on the Village's tree policy and ordered the communication noted and filed.

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[Board Minutes 11/26/74]
VILLAGE BOARD MEETING

November 26, 1974

A regular meeting of the Board of Trustees of the Village of Scarsdale was held in Rutherford Hall in the Village Hall on Tuesday evening, November 26, 1974, at 8:15 P.M., E.S.T. There were present Mayor Steyer, Trustees Brennan, Heming, Hodges, Johnson and Szabad. Also the Village Clerk, Deputy Village Clerk, Village Attorney, Village Treasurer, Deputy Village Treasurer, Village Manager, Assitant Village Manager and the Assitant to the Village Manager.

Absent - Trustee Kahn.

* * * * * *

Mayor: Some of the residents who attend our meetings have been having difficulty hearing. If any of you are having trouble will you move forward intead of our turning on the address system.

* * * * * *

Dep. Vill. Clerk: Communication from the Scarsdale Creche Committee requesting permission for Nativity Scene in Boniface Circle.

Johnson: Move resolution.

Hodges: Second

Szabad: I am abstaining. I believe it is unconstitutional and not correct separation of Church and State. At the same time I believe there will be more harm done than good by denying the application but I cannot vote for it.

Mayor: The resolution is attached to the request and it will be granted.

* * * * * *

Dep. Vill. Clerk: Communication from the Scarsdale Garden Club Section of the Scarsdale Woman's Club urging the Village to improve its inspection of the valuable and beautiful trees in the Village.

Mayor: The letter will be filed. Trustee Szabad will make a report on the question of the Village's policy on trees.

[Board Minutes 11/18/75]
SCARSDALE CRECHE COMMITTEE
SCARSDALE, N.Y.

November 7, 1975

The Village Board
Scarsdale, New York

Gentlemen:

The Scarsdale Creche Committee, representing the following churches:

St. James the Less
Scarsdale Baptist
Scarsdale Congregational
Our Lady of Fatima
Church of St. Pius X
Immaculate Heart of Mary
Grace Lutheran
Trinity Lutheran
Redeemer Lutheran
Greenville Community
Hitchcock Presbyterian

respectfully request permission to erect its Nativity Scene in Boniface Circle in the Village of Scarsdale, during the coming Christmas Season.
We appreciate the permission you have granted to us these past many years and will appreciate again, your permission to us to again erect our creche.

Respectfully submitted,

Scarsdale Creche Committee

By_____
Co-Chairman

By_____
Co-Chairman

[Board Minutes 11/18/75]
SPECIAL MEETING

Rutherford Hall
Village Hall
Scarsdale
November 18, 1975

A special meeting of the Board of Trustees of the Village of Scarsdale was held at Rutherford in the Village Hall on Tuesday evening, November 18, 1975, at 8:15 P.M., E.S.T. There were present Mayor Johnson, Trustees Brennan, Heming, Jensen, Kahn, Richman and Szabad. Also the Village clerk, Deputy Village Clerk, Village Attorney, Village Treasurer, Village Manager and the Assistant Village Managers.

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The Deputy Village Clerk presented a communication from the Scarsdale Creche Committee requesting permission to erect a Nativity Scene in Boniface Circle during the Christmas Season.

Upon motion duly made and seconded, the following resolution was adopted, Trustee Richman voting Nay and Trustee Szabad abstaining:

RESOLVED: that for the year 1975, permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas Season.

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The Deputy Village Clerk presented a communication from Stuart P. Schirota inviting the Mayor and the Board of Trustees to the Annual Christmas Sing on Sunday, December 21st, at the Village Hall and requesting some Christmas decorations this year.

The Mayor stated that the public is invited and each Trustee will notify Mr. Schirota of his intention.

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The Deputy Village Clerk presented four communications and one telephone call in opposition to the sale of Village-owned

[Board Minutes 12/9/75]

AYES	NAYS	ABSENT
Mayor Johnson	None	None
Trustee Brennan		
Trustee Heming		
Trustee Jensen		
Trustee Kahn		
Trustee Richman		
Trustee Szabad		

* * * * * *

The Mayor stated that the Village employess held a retirement party last week for Bill Meyer and Joe Cantatore. 125 people were present. Bill has been Clerk of the Works on just about every project in the Village for the past 10 years and the quality of the construction has been his contribution to the Village. Joe has been General Foreman of the Highway Department and has served the Village for 25 years.

The Mayor presented Mr. Meyer and Mr. Cantatore with plaques in appreciation for their services to the Village.

* * * * * *

The Deputy Village Clerk presented a communication from Mrs. Nettie Breines, 8 Ho.seguard Lane, protesting the Nativity Scene at Boniface Circle and questioning the legality of placing it on Village-owned land.

The Mayor stated that the Village Attorney has looked into the question of the legality of allowing the Creche Committee to place a Nativity Scene at Boniface Circle. It appears that the case law in Westchester County has supported the allowance of this type of thing on public property.

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The Deputy Village Clerk presented a communication from Mrs. Joan Scobey, 9 Lenox Place, favoring Impact Equivalency Zoning.

The Deputy Village Clerk presented communications opposing Impact Equivalency Zoning from the following:

[Board Minutes 11/23/76]
SCARSDALE CRECHE COMMITTEE
SCARSDALE, N.Y.

November 10, 1976

To the Village Board
Scarsdale, N.Y.

The Scarsdale Creche Committee, representing the following churches:

St. James the Less
Our Lady of Fatima
Church of St. Pius X
Immaculate Heart of Mary
Grace Lutheran
Trinity Lutheran
Church of the Redeemer Lutheran

respectfully request permission to erect its Nativity Scene at Boniface Circle in the Village of Scarsdale, during the coming Christmas Season. We appreciate the permission you have granted to us these past many years, and will appreciate again, your permission to us to again erect our creche.

Respectfully submitted,

Scarsdale Creche Committee

By:_____

1 Rochambeau Road
Scarsdale, NY

By:_____
307 Boulevard
Scarsdale, NY

The Scarsdale Creche Committee
Scarsdale, New York

November 26, 1976

The Village Board
Scarsdale, New York

Mayor Johnson and Trustees:

The Scarsdale Creche Committee would like to express their appreciation for your favorable vote in granting us permission to erect our creche once again at Boniface Circle. We will be happy to follow the guidelines agreed on at Tuesday's meeting and ask that you send us the exact wording for the sign which we will place along side the creche.

Thank you again and be assured that you will receive our utmost cooperation.

Respectfully yours,

The Scarsdale Creche Committee

1 Rochambeau Road
Scarsdale, New York

The Deputy Village Clerk presented a communication from the Scarsdale Creche Committee requesting permission to erect a creche in Boniface Circle during the Christmas season.

The Mayor stated that a number of communications have been received on this matter, one of which was signed by ten clergymen in the Village suggesting that it might be more appropriate to have the creche rotated among church properties in the Village. At the request of the Board, the Advisory Committee on Human Relations has submitted a communication recommending that the request of the Scarsdale Creche Committee be granted.

Trustee Gordon stated that the Law Committee, together with the Village Attorney, had been requested to research the law in this matter. The decisions found do not prohibit the erection of a creche on public property provided it is not

erected by the government agency. If the government agency does not put it up it does not violate the First Amendment or the Constitution of the State of New York. In the District of Columbia when they considered the matter the Judge thought it would be useful if there was some sign to indicate that the creche was erected by a private group and not a public authority. This would be a useful addition to the resolution granting permission to the Scarsdale Creche Committee.

The following persons appeared in favor of granting permission to the Scarsdale Creche Committee to erect a creche in Boniface Circle:

Mrs. William Green, representing the church of St. James the Less
Thomas C. Kavanaugh, President, Chamber of Commerce
Mrs. Patricia Curran, Scarsdale Creche Committee
James Meehan, 914 Post Road
Richard Gast, President, Arthur Manor Association
Rev. Merlin Meyer, Trinity Lutheran Church
Mrs. Eleanor Kirk, Advisory Committee on Human Relations
Leonard Rubin, 34 Farley Road, appeared in opposition to granting permission to the Scarsdale Creche Committee.

Upon motion duly made and seconded, the following resolution was adopted by a vote of 4 to 1, Trustee Richman voting Nay:

RESOLVED: that for the year 1976, permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas season, and be it

FURTHER RESOLVED: that an appropriate sign be affixed to said Nativity Scene stating that it is erected and maintained by the Scarsdale Creche Committee, a private organization.

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The Deputy Village Clerk presented a communication from Mrs. Burnham Finney, Chairman, Public Affairs Committee, Scarsdale Woman's Club, commending the Board's efforts to get community reaction to the introduction of Cable TV through the appointment of a special committee and through the questionnaire in the Village Report and emphasizing that no public funds should be used, either directly or indirectly to introduce and support Cable TV.

The Mayor stated that there will be a special fee for Cable TV and that will be one of the things considered by the committee.

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The Deputy Village Clerk presented a communication from Ira Birnbaum of UA-Columbia Cablevision of Westchester stating that the company is interested in providing cable television service to residents.

The Mayor directed that the communication be noted and filed and a copy of the accompanying report be sent to the committee.

* * * * * *

The Deputy Village Clerk presented a communication from Mrs. Joan Israel, 17 Horseguard Lane, commending Tony Murgolo for

[Board Minutes]
knocked us out of schedule.

* * * * * *

Dep. Vill. Clerk: Communication from the Scarsdale Creche Committee requesting permission to erect a creche in Boniface Circle during the Christmas season.

Mayor: We have had a number of communications on this. The Creche Committee has requested that we allow them to put the creche up in Boniface Circle which is Village-owned land. We have received a communication from 10 clergymen in the Village suggesting that it might be more appropriate if

the creche was rotated among church properties in the Village and I believe that the Creche Committee has been informed of this but they have asked the Village to allow them to put on Village-owned property. We have a communication, as a result of a Board request to the Advisory Committtee on Human Relations, recommending that if a request is made by the Creche Committee to erect a nativity scene that the Village agree to the request. Any Trustees have comments?

Richman: I am confused. One of the churches on the list that the Creche Committee represented is on the list in the clergymen's letter, who say that the proposal is to move it to a location that is not public property.

Mrs. William Green, representing St. James the less: that was only if you do not allow it on Village-owned property.

Richman: I see that of the 7 churches represented by the Creche Committee at least 3 have creches on church property each year and I am not sure why they want it on public property too.

Mayor: No one has to justify their actions.

Gordon: You asked the Law Committee, together with the Village Attorney, to research the law. We have done so and the decisions we have found do not prohibit erection of a creche on public property, either school, town of U.S. Government provided that it is not an establishment of religion. The first amendment also prohibits the abridgement of free expression. If the governmental agency does not put it up it is not violating the first amendment. We would not be prohibited from granting permission provided they make arrangements, they erect the creche and see that it is taken down and if it is lighted they are responsible for paying for the electricity. Article 1, Section 3 of the laws of New York allows it. Both of these have caused judges to reach the conclusion that where tradition had allowed it on public property for a number of years to deny it because of some people would be what it says we should not do. We close schools, we close the Village Hall. It is a holiday and it is traditional to close government offices at this time of year. Under the circumstances the Law Committee feels it is one of policy, not law. None of the employees are to be responsible

for putting it or taking it down. There has been a suggestion from my fellow member of the Law Committee. In the District of Columbia when they considered the matter, the judge thought that it would be useful if there was some sign which indicated that the creche was erected by a private group and not a public authority. I would think that that could be a useful addition to the creche if there was a sign, in good taste, that indicated that it was erected by the Creche Committee.

Mayor: Are there any oral communications?

Leonard Rubin, 34 Farley Rd.: There is a case in Oregon where was held unconstitutional that a cross be erected on public land. Celebrating Christmas Day is because most people are Christian. It is improper to put the creche on public property. I question why a small piece of Village-owned land should be the one place for a religious display. There has to be separation of church and state. Taking this position now in determining whether or not it should be used for a religious display - the request should be denied. I suggest that it should be put over until

Mayor: Would you be opposed to the Chamber of Commerce installing Christmas lights?

Rubin: The creche should not be put up.

Gordon: We are not putting up anything. The permission for the use of Boniface Circle is not entirely improper. It is a Memorial to our war dead. We are not putting it up. We are considering a request for a Committee to put it up at a traditional time at a traditional place.

Mayor: Our Law Committee has advised us that we do not have a constitutional issue. Anyone else to be heard?

Cavanaugh, Chamber of Commerce: I have been instructed by the Chamber to report that the vote was 58 in favor of the creche being allowed to remain. There is another point. In Larchmont, after an emotion discussion stores were boycotted there on a basis of religion. We love Scarsdale and do not like to see it changes. It could be looked into again next year.

Mrs. Patricia Curran, Scarsdale Creche Committee.

(letter as read)

James Meehan, 914 Post Rd., representing I.H.M. in support of the creche — as read. The first creche erected in Boniface Circle was our creche. The Creche Committee borrowed it. We have had more than a passing interest in the creche. For 18 Christmas seasons the creche seemed to say peace to men of good will. Therefore I request you again grant the Creche Committee permission to erect the creche.

Richard Gast, 163 Johnson Rd., President, Arthur Manor Assoc.: We voted 11 to 0 to urge the Village Board to approve the Creche Committee's request.

Rev. Merlin Meyer, Trinity Lutheran Church: I met with the clergy and I know that they had written a letter requesting it be moved to their property in the interest of peace. There is no problem. In checking with the business community they made it clear that they did not want to see it moved because it is a tradition and it would cause disharmony if removed. The Jewish merchants felt it should not be removed. Certainly removing it would show prejudice. Any religious group can if they come to the Village with a request can have a symbol of their faith. At this time of year it makes for a feeling of joy and peace and I hope the Trustees will listen to our neighbors who hope you will let us keep the creche.

Eleanor Kirk: We made a recommendation to your Board and I wonder if we could read our contribution

(as read)

Mayor: Thank you. I might point out at this time that the Human Relations Committee is like the volunteer fire department. It is fortunate in this community that we have not had to use their services. We gather once a year and they say when do we get some action. It is only with an issue like this that a group such as the Human Relations Committee can provide us with advice. A request has been made to the Board to allow the Creche Committee to use Boniface Circle for the erection of the creche. I would entertain a motion that the creche be allowed with Trustee Gordon's amendment that an approved sign be requested indicating that this was installed by the Creche Committee and not the government.

Richman: I would like to speak to them separately.

Jensen: I move the approval of the Creche Committee's request.

Richman: I agree with Mrs. Kirk for harmonious relationships. I agree with Rev. Meyer the creche is not offensive. I would disagree to the extent that to deny the use of public property would be a limitation of your free exercise of religion. I think in spite of all the opinions tonight there are many people who share my view that the creche should not be on public property, not because of offensiveness, I think that the symbol of religion should not be on public property. I vote against the motion to grant permission.

Vote of 4 in favor, one against.

Mayor: Motion to put sign.

Jensen: Move sign, as a condition, indicating that it was put up by a private group.

Mayor: This creche has been erected and maintained by the Scarsdale Creche Committee, a private organization.

Richman: I think if you are going to grant permission it should be done.

Mayor: The creche will be allowed to be installed by the Creche Committee with that requirement.

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Dep. Vill. Clerk: Communication from Mrs. Burnham Finney, Chairman, Public Affairs Committee, Scarsdale Woman's Club commending the Board's efforts to get community reaction to the introduction of Cable TV through the appointment of a special committee and through the questionnaire in the Village Report and emphasizing that no public funds should be used, either directly or indirectly to introduce and support Cable TV.

Mayor: There is a special fee for Cable TV and that will be one of the things addressed by the Committee.

* * * * * *

Dep. Vill. Clerk: Communication from Ira Birnbaum of UA-Columbia Cablevision of Westchester stating the company is interested in providing cable television service to residents.

Mayor: Noted and filed and a copy of the accompanying report sent to the committee.

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Dep. Vill. Clerk: Communication from Mrs. Joan Israel, 17 Horseguard Lane, commending Tony Murgolo for taxi service.

Mayor: Mrs. Israel has commented on Mr. Murgolo's taxi service.

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Dep. Vill. Clerk: Notice of an application before the Planning

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Mayor: I do not think we should table it but if we have any information we should contact Audrey Hochberg.

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Mayor: Oral communications.

Feiner: I have always believed that it is the responsibility of the Board to answer communications. In my communication I urged you to consider the resolution to deny Village facilities to the Town Club and the Village Club.

Mayor: The reply we gave earlier. We have received it and since it does not require action we are tabling it and filing it.

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Payment to County Electric.

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Payment to City Refrigeration.

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Awarding contract on rescue tool
Roll call vote - all ayes.

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Budget modifications.
All ayes.

Mayor: This is a useful process. Many communities only do it at the end of the budget year. This is very useful.

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Water fees.
All ayes.

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Mayor: Financial report.

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Mayor: The Treasurer has filed paid Bond Anticipation Notes of the Library.

November 11,1977

TO THE VILLAGE BOARD
Scarsdale, N.Y.

The Scarsdale Creche Committee, representing the following churches:

St. James the Less
Scarsdale Baptist
Our Lady of Fatima
Church of St. Pius
Immaculate Heart of Mary
Grace Lutheran
Redeemer Lutheran
Trinity Lutheran

respectfully request permission to erect its Nativity Scene at Boniface Circle in the Village of Scarsdale, during the Christmas season of this year.
We appreciate the permission you have granted to us these past many years, and will appreciate again your permission to us, to again, erect our creche.

Respectfully submitted,
SCARSDALE CRECHE COMMITTEE

BY_____
Co-Chairman

BY_____
Co-Chairman
1 Rochambeau Road
Scarsdale, NY 1054

[Board Minutes 11/22/77]

The Deputy Village Clerk presented a communication from Mr. Joshua F. Greenberg, President of the Quaker Ridge Association, stating that a pathway on Griffen Avenue would add immeasurably to the safety of those in the community who bicycle, jog or simply walk along the busy street. He also stated that he knew of no homeowners who would object to this project even though at one time there was some opposition to it. He requested that he be notified of any additional hearings with respect to this matter.

* * * * * *

The Deputy Village Clerk presented a communication from the Scarsdale Creche Committee, 1 Rochambeau Road, requesting permission to erect a Nativity Scene at Boniface Circle during the Christmas season.

Trustee Gordon stated that this matter has been adjudicated before the United States District Court, Southern District of New York, before Judge Ward. He reported the Court's opinion in the case stating the Court had no jurisdiction over the case as presented. He further stated Judge Ward dismissed the matter.

Trustee Gordon recommended that the Board give the Creche Committee permission to erect the nativity Scene, with a sign stating the Creche is erected and maintained by a private organization.

Trustee Richman stated that she opposed the display of religious symbols of worship on public property.

After discussion, and upon motion duly made and seconded, the following resolution was adopted, Trustee Richman voting nay:

RESOLVED: that the Scarsdale Creche Committee is hereby permitted to erect a Nativity Scene on Boniface Circle with the following conditions:

1. That along with said Nativity Scene, a sign be erected to read as follows: "This Creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization."
2. That the Scarsdale Creche Committee shall do all the necessary work in erecting and taking down the Creche at no public expense.
3. That Boniface Circle must be restored to its previous condition after the Creche has been taken down and removed.

* * * * * *

The Mayor presented a communication from Lawrence C. Salley, Program Administrator, Westchester County, to Mr. Lowell J. Tooley, Village Manager, wherein Mr. Salley answered questions concerning the Urban County Community Development Program.

The Board discussed the risk involved if the Village joined the program and what it meant to the County if the Village joined.

The Village Manager stated that if the Village dropped out, $385,000 worth of Federal Aid would be lost to the participating municipalities in the Urban County Program.

Mr. Salley appeared and stated that the deadline for submission in the program is December 15, 1977. He also stated the Village would incur no financial risk by participation, and that the program is effective for only one year. The Village would have no commitment to continue in the program after that time if they so chose.

After discussion, Trustee Richman moved and Trustee-Jenser seconded the following:

RESOLVED : that the Village enter into an agreement with the Urban County Community Development Program.

The motion was defeated; Mayor Szabad, Trustees Jensen and Richman voting aye and Trustees Brennan, Browning and Gordon voting

[Board Minutes 12/13/77]

The Mayor stated the matter will also Personnel Committee.

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The Deputy Village Clerk presented a communication from Mr. William G. Paddock, Chairman of the Special Events Committee of the Town Club, inviting Village Officials to their 46th Annual Christmas Carol Sing to be held at Village Hall on Sunday, December 18, 1977 at 6:00 P.M.

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The Deputy Village Clerk presented a communication from Mrs. John J. Curran, 1 Rochambeau Road, expressing thanks on behalf of the Scarsdale Creche Committee for the Board's permission to erect the Nativity Scene on Boniface Circle. Mrs. Curran stated that the conditions listed in the letter she received from the Village will be adhered to.

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The Deputy Village Clerk presented a communication from Mr. Stanley Schear, Chairman of the Committee of Transitional Services for Westchester County, requesting that his name be considered for membership on the Advisory Council for the Handicapped.

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The Deputy Village Clerk presented a communication from Adrienne Lefkowitz, Renee Blau and Carolyn Levy stating that they cannot be forced to rely on private bus service to Quaker Ridge School because of the astronomical cost involved. A pathway must be constructed on Griffen Avenue before the next school year.

The Board discussed the proposed pathway project along Griffen Avenue as to whether a decision should be made at this time or have it considered as part of the Village's normal budget preparation review process.

[Board Minutes 12/9/80]

SCARSDALE CRECHE COMMITTEE

November 17, 1980

Village Board of Trustees
Scarsdale Village Hall
Scarsdale, New York, 10583

Dear Mayor Jensen and Village Trustees:

Last year's recommendation by the Village Trustees to the Scarsdale Creche Committee to consider placing the Creche on church property on a rotating basis was also requested this month by the Advisory Council on Human Relations. The Scarsdale Creche Committee met on November 12th to discuss this possibility and it was agreed that this suggestion was not the choice of the committee. A motion was made, seconded and unanimously accepted to erect the Creche at Boniface Circle.

Therefore, on behalf of the Scarsdale Creche Committee, I am once again asking permission to erect the Creche on Boniface Circle. You can be assured that the conditions set up in the past few years will once again be followed.

If permission is granted, the Creche would be set up on December 17th, weather permitting, and removed as soon as possible after the New Year, again, weather permitting.

Sincerely yours,

for The Scarsdale Creche Committee

Mrs. John J., Curran
1 Rochambeau Road
Scarsdale, New York 10583

Mayor Jensen has asked that Mrs. Curran supply the names of all Committee members and the Houses of Worship they represent.

Mayor Jensen asked for suggestions from residents who were present, receiving none, he stated that it was the sense of the Board to participate in the Urban County program of Home Rehabilitation Loan and Grant Program for the 1981/82 program year.

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The Deputy Village Clerk presented the following written communications that were received by the Board.

Chris Schroeder, President of the Junior Class of the Scarsdale High School has written to the Board of Trustees requesting permission to hang a banner in Chase Road Park for the Junior Class Crafts Fair to be held from December 10th to the 12th.

The matter was referred to the Manager's Office for consideration.

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Patricia Curran, representing the Scarsdale Creche Committee, has written to Mayor Jensen concerning the placement of the creche at Boniface Circle during the Christmas season. She has included the list of persons on the Scarsdale Creche Committee and the local churches they represent.

Trustee Ullman presented the following statement concerning this request.

"We have before us tonight the request of The Scarsdale Creche Committee dated November 17 to erect their creche on Village property at Boniface Circle during the 1980 Christmas season.

"The creche has been placed in Boniface Circle every Christmas since about 1957. The figures are wood carvings made by a Scarsdale sculptor at a cost of $1,625 (1957 dollars) which was donated by a number of neighborhood churches.

"The creche is erected and maintained each year by the Scarsdale Creche Committee, a private organization which consists of representatives of certain churches in and around the Village of Scarsdale. It has over the course of time consisted, as far as I could ascertain, of representatives from eleven such churches, comprising all the Christian denominations in the Village except the Mormons and the Christian

Scientists. Some of these representatives are chosen by their pastors, others by their Guild, their Church Council or their Board of Deacons.

"Each of the churches represented on the Committee makes a small annual contribution to the Committee; these contributions cover all costs of the creche display. The Village maintains the park at Boniface Circle as public expense, but it incurs no added cost from the presence of the Creche.

"The land at Boniface Circle was acquired in 1931 from Scarsdale Improvement Corporation which dedicated it to the Village for park purposes only. The permission this Board had heretofore given to the Creche Committee is clearly not a violation of that restriction.

"In 1976 Mr. Leonard Rubin of Farley Road brought suit against the Village in Federal District Court to require removal of the creche on the ground that our authorization to display it on Village property was a violation of the 1st and 14th amendments as a "law respecting an establishment of religion". The suit was dismissed on jurisdictional grounds, and was never renewed. However, at least since that time, the annual request of the Creche Committee and this Board's affirmative response to it had brought forth a few vocal and sometimes eloquent statements in opposition, on constitutional grounds, both orally before this board and in the Letters to the Editor of the Inquirer.

"We have sought and obtained the opinion of our Village Attorney as to the legality of the course we have heretofore followed. He assures us that all available precedents hold that such use of public property is constitutional as long as the municipality takes no part in it and incurs no expense as a result of it. I am not persuaded that a high court may not one day come down on the other side of that question. For the present, however, we have to assume that the requested use is a legal one, notwithstanding the fact that we have been forewarned by Mr. Rubin that if we approved the request he is planning to bring suit again this year.

"The discussion which accompanied Mr. Rubin's suit in 1976 had one notable effect. It led the Scarsdale Congrega-

tional Church, Hitchcock Presbyterian Church and Greenville Community Church to withdraw from the Creche Committee. this hear they were followed by the Church of St. James the Less. The Creche Committee thus now represents seven churches, five within the Village and two outside of it. Only three of its present members actually live in the Village.

"The Board is acutely aware that there is opposition to the use of Village property for a religious Christmas display, not only on constitutional grounds, but on grounds of offense to citizens of other faiths. When the issue came before us a year ago, we granted the request of the Creche Committee, based on over 20 years of established Village tradition, but in so doing, we requested the committee to consider placing the creche this year on church property.

"Some months ago we requested our Advisory Committee on Human Relations under the Chairmanship of Lynne Clark to meet with the Creche Committee and attempt to reach a solution which would preserve good relations among all our citizens, in the interest of the Village as a whole. The groups did meet and had a full and free discussion of the situation. The Creche Committee is quite aware of the increasingly sensitive nature of their request in a communmity in which the non-Christian population now represents a very substantial although undefined percentage of our citizenry.

"The Committee feels that it is essential that the creche be displayed somewhere in downtown Scarsdale. It is for this reason that its display on church property is unacceptable to them, since no church property is sufficiently central or affords sufficient exposure, in their judgment. However, they were perfectly willing to consider the possible use of private property in the downtown area as an alternative, and the Council on Human Relations thereupon attempted to get the permission of several private owners for the creche to be set up on their property. All of their efforts proved unsuccessful.

"The Council thereupon requested the Creche Committee in writing to consider the church property alternative, at least two churches having offered the use of their grounds. The request was unanimously rejected by the Committee. On this state of

facts, the Human Relations Council then made its report to this Board. The report is available to the public. Although the council is about equally divided between members of the Jewish and Christian faiths, and although individual members of both faiths were opposed to the use of Village property for this purpose, the Council nevertheless *unanimously* recommended to us that we grant the request of the Creche Committee again this year. It did so in the belief that it would be even more damaging to good feeling in the Village to deny the request than to grant it.

"This is the posture in which the matter comes before us tonight. In order to put it into discussion I move, Mr. Mayor, that this Board accept the request of the Scarsdale Creche Committee for permission to erect its creche at Boniface Circle during the 1980 Christmas season, subject to the conditions previously obtaining, namely that the committee shall:

1. prominently display its existing sign which reads "This Creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization"
2. provide the Village with satisfactory liability coverage
3. erect, remove and clean up after the display at no cost to the Village."

Trustee Sims offered the following comments on the subject:

"Last year after the Board had voted to grant permission for a creche to be erected at Boniface Circle a motion was made and unanimously passed advising the Creche Committee that the Board deemed it advisable for the creche to be rotated in future years at various churches for the annual display. I count 14 churches in the Village. Five years ago 11 or 12 were said to have been members of the Creche Committee, today 7. Why the decline? When our Board recommendation on the creche was sent out last December a reply rejecting the recommendation was received so rapidly as to indicate that there could hardly have been time to consider or consult all the church ministers or all of its lay leaders. Apparently just the seven committee members. We have now learned that the Creche Committee includes only five Scarsdale churches out of the

fourteen and that it includes only three residents out of the seven members of the committee. It is natural of course for a committee to be vitally interested in its purpose. It is equally natural for a responsible local government to respond to that purpose in the light of its affect on all the community. I understand that an effort has been made to find private property owners whose location are as good or better than Boniface Circle who might be willing to permit display of the creche, at least a few were so inclined, but later declined, possibly because it might offend some customers. But these people already are our customers, our residents. The non-Christian population of the Village has been variously estimated to be between 25 and 50%. Those few thousand families have been content to be as good neighbors in regard to the Christmas display. Perhaps it is time now for the other few thousand families to be equally considerate and good neighbors. The golden rule works two ways."

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Trustee Brown made the following comments:

"My feelings are that after serious consideration, other Boards have appointed a superb Human Relations Committee, composed of people of different faiths and many points of view. This committee has done its homework diligently and has given us its considered recommendation taking into account all aspects of the situtation. Since I see no reason to discount their judgment, I therefore support this motion."

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Trustee Underweiser's comments:

"It seems this is the second year in a row where the Advisory Council has requested that the creche be placed on private property or on church property. After the second time, the Creche Committee met to discuss this possibility and has agreed that the suggestion is not the choice of the committee.

"We do have a divergent point of view here. Our Board appointed Council on Human Relations has twice suggested that the creche be placed on church owned property or on private property and apparently twice, it has been decided by the Creche Committee to reject the suggestion. It is true, and

this is what's making it very difficult for this Board, particularly for myself, that after this second rejection was received, the Advisory Council in its report to us as quoted by Trustee Ullman, advised that it may be more devisive to the community to deny allowing this long standing tradition. I think this is a very difficult issue that has been placed before this Board, I consider it an inappropriate one, I feel that the original suggestion of the Advisory Council is not being followed. This is my point of view at the moment."

Trustee Stone stated that she agreed with Trustee Underweiser—that every reasonable suggestion has been made to the Creche Committee to place the creche on church property. They have seen, in their judgment, to turn down the recommendation, and I will oppose their request this year."

A vote by the show of hands was taken and the request was approved by a four to three vote. Trustees Brown, Browning and Ullman and Mayor Jensen voted Aye, Trustees Sims, Stone and Underweiser voted Nay.

RESOLVED: that the Scarsdale Creche Committee is hereby given permission to erect a Nativity Scene on Boniface Circle during this Christmas season with the following conditions:

1. that along with said Nativity Scene, a sign be erected to read as follows: "This Creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization."
2. that the Scarsdale Creche Committee shall do all the necessary work in erecting and taking down the Creche at no public expense.
3. that Boniface Circle must be restored to its previous condition after the Creche has been taken down and removed.
4. that liability insurance be provided to the satisfaction of the Village Attorney.

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[Board Minutes 11/10/81]

Scarsdale Creche Committee

November 2, 1981

Village Board of Trustees
Scarsdale Village Hall
Scarsdale, New York 10583

Dear Mayor Stone and Village Trustees:

Again this year the Advisory Councuil on Human Relations asked the Scarsdale Creche Committee to consider a privately owned site in the downtown area of the village for the erection of the Creche. We agreed to place the Creche on the property suggested but the response on the part of the business people involved was negative.

Therefore, on behalf of the Scarsdale Creche Committee, I once again request permission to place the Creche on Boniface Circle with the assurance that all the conditions set up in past years will be followed.

We would plan to set the Creche up on Thursday, December 17th, weather permitting, and would remove it as soon as possible after January 1, 1982, again, weather permitting.

The following is a list of the churches and their representatives who are members of the Creche Committee:

Church	Representative	Address
Immaculate Heart of Mary	Patricia Curran (Chairman)	1 Rochambeau Road Scarsdale
Trinity Lutheran	Cynthia Barsuhn	307 Boulevard Scarsdale
St. James the Less	Constance Dohrenwend	6 Paddington Road Scarsdale

Church	Representative	Address
Church of the Good Shepherd	Dorothy Revelli	11 Kolbert Drive Scarsdale
Grace Lutheran	Doris Adler	123 Brambach Road Scarsdale
Church of St. Pius	Mary Tully	23 Leatherstocking Lane Scarsdale
Scarsdale Community Baptist	Joan Mann	24 Sherwood Place Scarsdale
Our Lady of Fatima	Maria Pedulla	63 Brendon Hill Road Scarsdale

Sincerely yours,

for the Scarsdale
Creche Committee

Mrs. John J. Curran
1 Rochambeau Road
Scarsdale, NY 10583

[Board Minutes 11/10/81]

WHEREAS: the Advisory Council on Cable TV is the agency most familiar with this operation, now therefore be it

RESOLVED: that the Board of Trustees of this Village hereby authorizes and directs the Advisory Council on Cable TV to hold the public hearing required by Section 25.2.2 of the franchise agreement to consider the request of UA-Columbia Cablevision of Westchester, Inc., for an increase in subscriber rates, and the Board further authorizes and directs the Advisory Council on Cable TV at the conclusion of such hearing to report

its findings and recommendations to the Board of Trustees for action by the Board.

ORAL COMMUNICATIONS:

Paul Feiner of 15 Parkfield Rd. appeared before the Board concerning his proposal to establish a bus route between the Village and the City to help alleviate the crowded commuting situation on the railroad. He stated that a working meeting would be held at his home on November 19th to discuss the matter.

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Jessie Fiedler Co-President of the Village Club appeared before the Board concerning the proposed development of the Freightway area. She stated that it was the opinion of the Village Club that the basic goals of the Village, as stated in the Requests for Proposals, had not been met by the Polera proposal and they urged the Village to drop the Polera proposal, and to proceed to other alternatives for development of the Freightway property.

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Martin Roth of 33 Black Birch Lane appeared before the Board and presented a statement on the proposed location of the creche during the Christmas season. He was opposed to it being located at Boniface Circle stating that in his opinion, this was a violation of the first amendment to the U.S. Constitution.

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Lynne Clark, Chairman of the Advisory Council on Human Relations, appeared before the Board and read a letter from Peter Strauss, a member of this Council, concerning the placement of the creche at Boniface Circle.

It was Mr. Strauss' recommendation that approval be given to the Creche Committee to place the creche at Boniface Circle this season but that the Creche Committee must demonstrate a genuine effort to find an alternative site for next year otherwise the Board of Trustees would not look favorably upon its

request in 1982.

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Mr. and Mrs. James O'Connor of 141 Bradley Road appeared before the Board in support of the creche being located at Boniface Circle.

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Warren Grossman of 90 Mamaroneck Rd. appeared before the Board concerning the traffic light at Murray Hill and Mamaroneck Rds.

Village Manager Tooley explained that the matter was being studied and the light will be repaired if replacement parts are available.

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Lynne Clark, Chairman of the Advisory Council on Human Rights, appeared before the Board with the following recommendation from the Council concerning the placement of the creche during the Christmas season.

"Members of the Council believe that the creche should be placed on non-public property and have continued to encourage the Scarsdale Creche Committee to seek sites other than Boniface Circle or to withdraw their request. As no other locations are available in the center of the Village where the creche can be seen easily and church sites are not acceptable, the Creche Committee will bring their request again to the Village Board. The majority of the Council believes that it is less devisive to good community relations to allow this long standing tradition to be maintained rather than to deny permission. Therefore, the Council makes the following recommendation:

The Advisory Council on Human Relations recommends that the Village board of Trustees accept the request of the Scarsdale Creche Committee to erect its creche at Boniface Circle during the 1981 Christmas season."

* * * * * *

Trustee Bowen read the following statement concerning location of the creche:

"This is the first year I as a member of the Village Board have had to address myself to the question of whether or not to permit the Creche Committee to erect their display at Boniface Circle. I have been in attendance at the Village Board meetings over the last two years when this subject has been discussed. The personal feelings and deep concern of the then Trustees and Mayor speaking to both sides of the issue has been obvious. The decision reaches deep into emotions. There are no right answers; no matter how one votes on this issue someone will criticize that vote. And that criticism more than likely will have a justifiable base. It is sad that a dispute surrounds a display intended to express good will.

"No one on this board, as far as I know, is against the display of the creche. The issue is one of allowing a religious display on public property. The creche has been displayed at Boniface Circle since 1957. Since 1976, the permission to grant that display has been challenged, both in court, where the suit was dismissed on jurisdictional, not substantive, grounds, and before this board and in the press by a small but persistent and very persuasive group of residents and neighbors. It has been stated both formally and informally that there are many others in the community against the idea of allowing the creche to be displayed on public property who have refrained from speaking out so as not to cause dissension. Similarly, there are many who approve of the display who have remained silent as long as permission from the Village Board has been forthcoming.

"The Village Board, seeking guidance, has turned to its Advisory Counsel on Human Relations and asked them to look for a solution which would preserve good relations among all our citizens and to recommend to this Board a course of action which would be in the interest of the Village as a whole.

"The Council has been diligent in its efforts to find a satisfactory resolution. It has met often with the Scarsdale Creche Committee, with representatives of the various supporting Churches, and with representatives of private commercial establishments in an attempt to find an alternate site to Boniface Circle. And, most importantly, it has met as an

advisory committee to evaluate the situation year-to-year and, based on that discussion, to make a recommendation to this Board.

"The membership on The Human Relations Council is diverse and the personal opinions of its individual members differ, not necessarily aligned by religious belief. Yet, in spite of their personal feelings on the issue, the Council again this year has recommended unanimously that it remains in the best interests of the Village to allow the Scarsdale Creche Committee to erect their display at Boniface Circle.

"The Village Board depends very heavily on input from its advisory councils; yet it is not incumbent on us to automatically accept recommendations from those councils. Here, however, we have a recommendation based purely on a subjective issue. There are no hard facts to dispute —

— To the best of my knowledge there has been no change in the legality of the proposed action to cause a reversal of a position that has been accepted for 23 years.

— Further, there has been no appreciable change in the public record of community sentiment either pro or con.

"We have here an issue that brings forward deep convictions yet that must be resolved by the considered subordination of one's personal feelings. To one's perception of what is best for the common good.

"On this basis, I believe strongly that it is incumbent on us as Trustees to accept the advice of our Advisory Council. We have delegated to it a responsibility. It is one I am more than convinced has been addressed with compassion and diligence. The Council reflects, as best it can, community sentiment. In the absence of specifics that might dictate against accepting its conclusion, we should follow its recommendation."

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Trustee Sims read the following statement concerning the location of the creche.

"For years, there has been widespread unease in Scarsdale about the use of Village property fror the display of the creche. What kind of peace or goodwill can there be when members of other religions are annually offended by a theological display?

Offering the objectors the same right to erect a representation of their own does not respond to their objection.

"For the more than years that I have lived here, not I nor anyone else that I know, has objected to the creche per se. The objection is to its location — happy that our Christian friends enjoy it. And I can understand that Creche Committee would want the location that provides maximum exposure. But at what cost? Are the consequences of offending many neighbors so trivial that you must persist? It seems to me, therefore, that the neighborly thing to do is to place the religious symbol on church property. Two years ago, this was the unanimous recommendation of the Board of Trustees and chnurches did indeed offer their property for this purpose.

"Our Advisory Council on Human Relations has explored the problem at length. Their conclusion for the last two years was that the creche display had become a tradition after more than 20 years and that it would be more damaging to good feeling in the Village to deny the request than to grant it. I would ask us to address what we mean by "tradition".

"Independence Day, July 4th, is a tradition that all of us know and enjoy and in which many of us participate. Everyone here also knows that the Day of Atonement, Yom Kippur, is a tradition. But only for the Jewish people. Just as a creche is a tradition for the Christian people. Twenty years later, the creche is still not a tradition for me any more than Yom Kippur is a tradition for you. The recommendation, therefore, does not hold. It confuses tradition with habit or repetition. And the longer we maintain the habit, the more difficult it will be to end it.

"Out of respect for your neighbors, I urge you to end it tonight."

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Trustee Brown stated that although she had prepared a statement on the creche issue, her feelings were adequately stated in Peter Strauss' letter (copy on file).

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Trustee Ullman stated that there is no right answer to the creche matter – "As I see it, this is not a legal problem. It is

clear that as long as public property is not made available for religious use in a manner which entails public expense that there is no violation of the prohibition against supporting the establishment of religion. I think what we have here is an issue of human relations and here I agree with Trustee Bowen's opinion that since we have appointed an Advisory Council on Human Relations, which is very well represented in the population of this Village, and which is certainly a dedicated, hard working body which has agonized over this issue year after year, I think it is incumbent on us to follow their advice. I see no basis on which we could substitute our opinion for theirs. I think if I had a firm conviction that there was as much unhappiness about this situation as some people say, I might change my opinion. But I must say that I have not had one phone call on this issue, I have never heard really any great agitation on either side of the issue. And my own feeling is that we should continue in the tradition, or habit, which Scarsdale has followed for the last 15 or 20 years."

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Trustee Falkenberg stated: "I think the creche should not be allowed. Although attractive to some, I believe it is not congruent with the separation of church and state. The alternatives of church property appear only marginally less attractive than Boniface Circle. Further, I believe that acceptance of the tradition without re-examination is totally unacceptable."

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Mayor Stone asked for a roll call vote to accept or reject the request of the Creche Committee to place the creche at Boniface Circle during the Christmas season.

Those in favor of granting the request of the Creche Committee:

Trustee Bowen
Trustee Brown
Trustee Ullman

Those opposed to granting the request of the Creche Committee:

Trustee Falkenberg

Trustee Sims
Trustee Underweiser
Mayor Stone

Mayor Stone made the following statement: "This has been a very difficult decision for each one of us. In the past years that I have served on this Board, I have voted both ways reflecting my own personal difficulties in trying to determine what is the correct, the right course of action without regard to my personal beliefs and political ramifications or any consideration of legal action. These have been no part of my deliberation or decision.

"The Advisory Council on Human Relations, in their recommendation to us, stressed their strong preference to have this nativity display on private property. It is their concern for community feeling and interaction that prompts their recommendation to us. I am very mindful of all their efforts and I am grateful to them, in particular to Mrs. Clark, their Chairman, for their sensitive study of this subject. I am deeply appreciative that they undertook the additional responsibility to try and find a private site in the Village on which to place the creche. Even though I realize their roll is designed to be only advisory, it is particularly difficult for me to vote against their recommendation — one of our own councils. Regretfully, however, I must do so, in the belief that this refusal by the Village Board in not granting the Creche Committee's request, is not asking the Creche Committee to remove the creche, but merely to move it. It is the question of location of the creche not the tradition that has great meaning to many in the community. There is a real question in this community, a question that has been expressed by many of all faiths, as to the proprietary and the judgment of permitting any religious display on Village property. There is a viable and appropriate alternative — the use of any of several suitable church properties. It is with these two bases in mind and with the hope and the request that the Creche Committee will elect to go this direction that I vote to deny the request of the Creche Committee."

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The following written communications were presented by the Deputy Village Clerk:

Alan Jaffe of 101 Greenacres Avenue wrote to Mayor Stone expressing his thanks for the Board's quick response to the plea of Greenacres residents to re-open Walworth Avenue. He stated his confidence in the Board reaching a solution that will consider the interests and needs of all the residents of Greenacres.

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A letter was received from Matthew Martin, son of Mr. and Mrs. Martin of 23 Tunstall Road complaining about vandalism on Halloween night — specifically to their two cars that were sprayed with paint remover. He wanted parents to be aware of what their children are carrying around on the streets and also to stress that both the youngsters and the parents are responsible for this kind of damage.

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Trustee Ullman asked that a public hearing be called to consider adoption of Local Law Introductory #3 for 1981, which would amend the Scarsdale Village Code in relation to garbage and bulky waste.

Upon motion duly made by Trustee Brown and seconded by Trustee Sims, the following resolution was adopted unanimously:

RESOLVED: that the Board of Trustees of the Village of Scarsdale hereby calls for a public hearing to be held at its regular meeting of December 15, 1981, at 8:15 p.m. E.S.T. at Rutherford Hall in the Village Hall for the purpose of considering the adoption of Local Law Introductory #3 for 1981, which would amend the Scarsdale Village Code in relation to garbage and bulky waste.

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[Board Minutes 11/24/81]

FURTHER RESOLVED: that the Village Manager is authorized and directed to execute a contract and all other documents necessary to acquire such title on behalf of the Village of Scarsdale, which contract and documents are to be subject to the prior approval of the Village Attorney.

AYES	NAYS	ABSENT
Trustee Bowen	None	None
Trustee Brown		
Trustee Falkenberg		
Trustee Sims		
Trustee Ullman		
Trustee Underweiser		
Mayor Stone		

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Mayor Stone announced that a petition had been received containing 500 signatures of residents concerning the location of the creche. Also letters had been received from 23 individuals concerning this matter. The Board had also received a great deal of support and encouragement for the position that it took (denying the Scarsdale Creche Committee permission to locate the creche at Boniface Circle during the holiday season).

Mayor Stone also stated that all signed letters received had been distributed among the members of the Board of Trustees.

Patricia Curran, representing the Scarsdale Creche Committee appeared before the Board stating:

"The Scarsdale Creche Committee is grateful to the overwhelming number of residents who publicly expressed their dismay at not being able to view the creche at Boniface Circle this year.

"The Committee welcomes Mr. Durning's offer to place the creche on the property of the Frog Prince Proper for the 1981

Christmas season. We are aware that this site may not be available to the Creche Committee in the future since the Frog Prince Proper property is presently up for sale. Therefore, the committee hopes the Village Board will establish a policy which will make Boniface Circle the traditional home for the creche available in the future as it has done for the past 24 years.

"In addition, I have three other petitions with a total of 213 names to present to the Clerk."

Mayor Stone stated "I am sure that I can speak not only for myself, but for each member of this Board in expressing our appreciation to Mr. Durning for his coming forward with an offer truly in the spirit of the holiday. And our delight and further appreciation to the Creche Committee for their acceptance of this site to erect their creche this year. I think that all of us on the Board feel that it is a suitable and beautiful location for the creche and a timely and a welcome resolution."

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Robert J. Walsh of 11 Elba Place, Eastchester, appeared before the Board concerning the creche matter.

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Kevin Healy of 184 Madison Road appeared before the Board concerning the location of the creche and other matters relating to religious displays on public property.

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Warren Grossman appeared before the Board concerning the repair of the traffic light at Mamaroneck Road and Murray Hill Rd.

Mayor Stone informed Mr. Grossman that the subject was on the agenda of the Finance Committee for consideration.

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Howard Terriss of 2 Rectory Lane appeared before the Board concerning this same traffic light and also to announce a meeting of the Scarsdale Civic Club on December 9th to discuss the proposed Freightway development. The guest speaker will be Village Architect Donald Newman.

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Paul Feiner of 15 Parkfield Rd. appeared before the Board concerning the Freightway development. He suggested that a Village-wide advisory referendum be held on March 16th at the time of the Village election to determine the use of the Freightway property.

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The following written communications were presented by the Deputy Village Clerk:

Margaret D'Arcy of 7 Barry Road wrote to the Scarsdale Police Department thanking them for the assistance they gave when her husband became ill. She said the patrolmen were most considerate and capable — she needed help and they provided the best.

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[Board Minutes 11/23/82]

Scarsdale Creche Committee

October 25, 1982

Village Board of Trustees
Scarsdale Village Hall
Scarsdale, New York 10583

Dear Mayor Stone and Village Trustees:

On behalf of the Scarsdale Creche Committee, I once again ask your permission to erect the Creche on Boniface Circle. All conditions set up over the past years will be carried out by the committee.

If permission is granted, the Creche will be set up on December 16, and removed as soon as possible after the New Year.

Sincerely yours,

for the Scarsdale Creche Committee

Mrs. J. J. Curran
1 Rochambeau Road
Scarsdale, New York 10583

Paul Feiner of 15 Parkfield Road appeared before the Board concerning the bus service being offered into New York City by Vanguard Bus Co. He stated that the Village Manager had requested that these buses not run on Fox Meadow Road because of their size and noise and the fact that Fox Meadow Road is not a truck route. Mr. Feiner asked that the Village allow the buses to run on Fox Meadow Road through December.

Village Manager Tooley asked Mr. Feiner to meet with him to discuss the matter and try to work out a solution to the problem.

* * * * * *

John Goodman of 225 Madison Road appeared before the Board concerning this bus service.

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Dr. J. Carroll of 182 Garth Road appeared before the Board concerning the placement of the creche at Boniface Circle. It was her opinion that the law favored the use of Village property for such a use.

Mayor Stone informed Dr. Carroll that as yet no action had been taken by the Board concerning the creche matter.

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Lynne Clark, Chairman of the Advisory Council on Human Relations, presented the following statement regarding the Creche at Boniface Circle.

"The Advisory Council on Human Relations appealed once again to the Scarsdale Creche Committee to eliminate the Creche controversy by not bringing their request to the Village Board of Trustees and by finding a permanent non-public site for the display. The Council's concern is the harmony of all the people of Scarsdale. There was no doubt in the minds of all Council members that the recommended action to the Scarsdale Creche Committee would be in the best interests of the

Village. Any other path would lead to more controversy, more acrimony between residents of opposing views, more unpleasant publicity for the Village, the likelihood of expensive legal action and lasting bitterness.

"Unfortunately, as in the past, our unanimous and earnest plea did not dissuade the Creche Committee. Accordingly, as asked by the Trustees, the Advisory Council on Human Relations voted on whether or not to recommend to the Trustees granting the request. This was a most agonizing choice. Either "yes" or "no" causes a loss. It is a no-win situation.

"The Council was split on this issue. Three recommended denial. Five recommended approval. Those who recommended approval expressed the hope that, by proceeding with the display, a likely suit would result in a comprehensive and final hearing on the matter in a court of law, thereby freeing the people and their elected officials of what has been a chronic, holiday season, emotional crisis. Both "yes" and "no" members sought the same objective, each believing the path selected would more likely establish a permanent undisputed pattern. This objective was our central concern. Other issues of philosophy or morality or politics were considered less important than permanence as a determining factor in stopping annual discord. The "no's" believe the Trustees can accomplish this result. The "yes's" believe the Trustees cannot accomplish this result but that the court will, one way or the other."

Mrs. Clark gave the following information, in addition to her prepared statement. "I would like to mention two additional pieces of information that have become known to me. 1. Mr. Durning has offered the Frog Prince property again this year for a display of the creche. 2. The Baptist Church on Popham Road has also offered their property for this purpose."

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Mayor Stone expressed her appreciation and that of the Board for the efforts put forth by the Advisory Council on Human Relations on this matter.

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Mayor Stone presented the following statement on the creche matter.

"The Board of Trustees received yesterday a memorandum, an opinion of law, from a member of our Law Committee which I had requested, dealing with the constitutionality of approving or denying this request.

"This is a long document mentioning various cases, and we wish to consider it most carefully. The Trustees are unanimous in their decision, as is the Village Attorney, that the better course would be to postpone a decision, to vote on the Creche Committee request until the Law Committee has had sufficient time to read some of the statements that are referred to in that document as well as to instigate other legal research looking at different opinions and cases that I understand are available to them.

"I would also like to say that we would welcome any legal input from any of you as well to our Law Committee.

"I think everyone is in agreement at least that permanent legal clarification of this issue is in the Village's best interest and indeed I welcome such a clarification by any route. I wish these questions had been addressed in previous years but they were not. They have been raised now and should be examined. Perhaps as much as anyone in Scarsdale I would have liked to call for a vote tonight and put this behind us and proceed to work constructively for a happy holiday season. But like the other Trustees I do not feel ready to do so. In fairness to the Creche Committee and to our local merchants we want this sensitive issue resolved as soon as possible but we must allow sufficient time for further consideration.

"Our next scheduled meeting is December 14th which is too close to Christmas. So I am recommending that we call a special meeting of the Board of Trustees on Wednesday, December 1st to resolve this matter. I am further requesting that before the meeting our Law Committee meet with the Village Attorney, and subsequently to report back to the Board of Trustees and myself with their findings.

"The unavoidable absence tonight of Trustee Ullman, who has just returned from the hospital, also contributes to our thinking on postponing final action. We all prefer the participation of this full Board if possible, in resolving this question. Any of you, who have responses to Trustee Glendon's recommendation should be submitted by next Monday."

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Mr. Rubin appeared before the Board asking when Trustee Glendon's statement would be available for the public. Mayor Stone replied that it would be available from the Clerk's office tomorrow. It was his opinion that the Village should deny the Creche Committee's request.

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Patricia Curran of 1 Rochambeau Road appeared before the Board asking for a copy of Trustee Glendon's report. She commended Mayor Stone and the Board of Trustees for the time and effort they had given to this matter.

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The following persons appeared before the Board concerning the creche issue:

Kevin Healey	184 Madison Rd.	In favor of request.
Edna Golden		Opposed to request.
Dr. Carroll	182 Garth Rd.	In favor of request.
Edward Cousin	28 Thornbury	Opposed to request.
Marvin Fink	112 Brewster Rd.	Opposed to request.

Evelyn Carnicelli of 6 Tunstall Road appeared before the Board concerning the use of mini-bikes on Village streets by young children.

Mayor Stone replied to Mrs. Carnicelli stating that the problem would be investigated.

* * * * * *

Burton Fendelman of 1248 Post Road appeared before the Board asking if Boniface Circle had ever been used before for non-Village use.

He was told that it has been used in the past by the American Legion, Boy Scouts, Red Cross and the United Way.

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Paula Feiner of 15 Parkfield Road again asked about the bus service on Fox Meadow Road.

Mayor Stone stated that Mr. Feiner would hear from the Board about his concern that the bus be allowed to run on Fox Meadow Road at least through December.

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Upon motion duly made by Trustee Glendon and seconded by Trustee Brown, the following resolution was adopted unanimously:

RESOLVED: that an Executive Session is hereby called to discuss litigation matters.

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Mayor Stone reported on "Raccoon Night" stating that 120 residents were present at the meeting. The staff is preparing an information packet that should be ready for distribution on December 1st.

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The Deputy Village Clerk presented the following written communications.

Jessie Fiedler and Renee Pessin, Co-Presidents of the Village Club wrote to the Board of Trustees concerning the Village's procedures for holding public hearings.

They suggested that certain changes be made so that various Village organizations could deal more effectively with issues that are brought before

[Board Minutes 12/1/82]

VILLAGE OF SCARSDALE
BOARD OF TRUSTEES
SPECIAL MEETING

DECEMBER 1, 1982

A special meeting of the Board of Trustees of the Village of Scarsdale was held at Rutherford Hall in the Village Hall on Wednesday, December 1, 1982, at 8:15 p.m. E.S.T. Those present were: Mayor Stone, Trustees Bowen, Brown, Falkenberg, Glendon, Ullman and Underweiser. Also present were

Village Manager Tooley, Deputy Village Clerk Watson and Village Attorney Holden.

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Mayor Stone convened the meeting with a reading of the emergency fire exit notice.

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Mayor Stone stated that this was a special meeting of the Board of Trustees called to act on a specific item on which action was postponed to give Board members additional time to familiarize themselves with the legal background aspects that might have a bearing on the Board's response to the Creche Committee request to display the creche at Boniface Circle.

Mayor Stone read the following statement:

"Because this is a special meeting, the usual order of business will not be followed. There will be no minutes, reports, written or oral communications and we will proceed directly to the subject at hand.

"For your information, all written communicaztions on this subject that we have received, have been circulated to Board members as recently as of today and will continue to be so.

"I want to thank wholeheartedly Trustee Glendon and Trustee Underweiser for the prodigious amount of time and labor they put in on behalf of this Board. I also thank Trustee Ullman for his efforts, in the hospital and out, as Chairman of the Law Committee. I also greatly appreciate the legal input and interest of others of our community which this Board has welcomed.

"I would be remiss, however, as head of this Board if I did not publicly repudiate statements in one of these communications, suggesting that Trustee Glendon's presentation was misrepresentative, selective and intentionally deceptive. While we may not agree on our positions, to suggest that Trustee Glendon's work was prepared in any manner other than forthrightly and decently with the intent to inform this Board, is simply an unacceptable and hostile premise which I, and I think this Board refutes.

"Trustee Ullman, I am passing the podium to you."

Trustee Ullman read the following statement:

"It is the function of the Law Committee to advise the Board pertaining to matters of law.

"In our deliberations with respect to this application, we have had the benefit of a mass of legal material, some of it solicited, some unsolicited, and some independently researched, to help us determine our constitutional imperatives and to evaluate the able memorandum submitted to the Board by Trustee Glendon. We are grateful to all who have provided us with this material, which has been simultaneously made available to all members of the Board and not only to this Committee. All of us have spent many hours analyzing and evaluating.

"The applicaztion of the establishment and free exercise clauses of the first amendment is as the United States Supreme Court has repeatedly stated, 'a particularly difficult and complicated task', and the making of fine distinctions is as the court has also said 'of the esence of establishment clause analysis'. It is perhaps not surprising, therefore, that there is no unanimity among members of the Law Committee.

"Consequently, we are not in a position as a Law Committee to give a clear direction to the Board. Each of the Trustees has heard the views of the individual members of this Committee and will vote tonight on the basis of whatever considerations, not only legal, but moral, political or pragmatic, seem to them compelling. We vote as a legislative body and not as a court of law.

"This area of the law is one in which there is a new spate of litigation and controversy and in which new law is being made. It may well be that in another year we will have an authoritative determination on fairly comparable facts. I think we can all agree that it is undesirable for Scarsdale as a community to be the test case in this situation. Our involvement in a suit over this issue would be very expensive for Scarsdale taxpayers and would be politically and socially destructive. We do not need it. For that reason, I would personally appeal once more to the Creche Committee in case the Trustees grant them the permission they seek, and I don't

know which way this vote will go tonight, and that they elect voluntarily to relieve the Village of dissension by accepting Mr. Durning's offer to place the creche on his property on Chase Road."

Mayor Stone asked Trustee Bowen to move the resolution:

Upon motion duly made by Trustee Bowen and seconded by Trustee Brown, the following resolution was presented:

RESOLVED: that the application of the Creche Committee to place the creche on Boniface Circle be approved by this Board.

Trustee Glendon made the following statement before the vote was taken.

"Mayor Stone, fellow Trustees, my discussion will be very limited. I have set forth my views on the Constitutional implication of this problem in a memorandum dated November 22, 1982. I supplemented that memorandum with a second memorandum with additional information dated November 29, 1982, in which I pointed out that the Village before the Federal Court in 1977, took the position that permitting the creche to be placed on Boniface Circle did not violate the establishment clause. I added that in that same brief the Trustees represented to the court that 'the Board of Trustees permitted a group of residents to use Village property in the same manner as it would permit any other similar group seeking such position'. I did not have this information available for my first memorandum.

"I will not labor or bore you with the subject, I would simply like to say that I repeat, I reallege, I reincorporate my views as I expressed them in that memorandum. I have carefully examined the other memoranda that have been submitted and I say again, I repeat, reiterate and reincorporate my views with more conviction than I did the first time.

"I might simply comment on one case which was brought before you as somewhat apposite, with which I disagree, and that is — the case of ACLU of Georgia versus Rabun County Chamber of Commerce, decided by the Eleventh Circuit, June

21, 1982. That case involved the erection by a private group of a twenty-five foot cross, permanently erected on a mountainside in I believe Georgia. It was accompanied with two flood lights which permanently illuminated the parkground within which this cross was erected. Thus we have a twenty-five foot cross located permanently in a parkground illuminating the nocturnal activities of the citizens of the park, for good or evil, on a permanent basis. Somehow I find no equation between that and what is asked here."

No other Trustees desiring to make statements, Mayor Stone called for the vote:

The resolution was defeated by the vote indicated below:

AYES	NAYS	ABSENT
Trustee	Trustee Brown	None
Trustee Glendon	Trustee Falkenberg	
Trustee Ullman	Trustee Underweiser	
	Mayor Stone	

* * * * * *

meeting adjourned: 8:30 p.m.

Avis A. Watson

Deputy Village Clerk

[Board Minutes 12/14/82]

William McCreery, President of the Town Club appeared before the Board concerning the 1983/84 Village budget. It was the Town Club's executive committee's opinion that the overall target for a Village tax increase should not exceed 4%. Also, they recommended that a 5% limit be placed on salaries, wages and fringe benefits for Village employees. Mr. McCreery's complete report is on file.

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Paul Feiner of 15 Parkfield Road appeared before the Board asking if the Village had done anything to encourage Village employees to participate in the employees award program. He also suggested expanding this program to include all Village employees, not just clerical workers.

Mayor Stone replied by saying that they would get back to him later with the information he had requested.

Mr. Feiner also suggested that the Board of Trustees adopt a resolution stating their opposition to a rate increase for the MTA (Metropolitan Transportation Authority). He also asked that an Ad Hoc committee be formed to study the transportation problem.

Trustee Glendon informed Mr. Feiner that the Board was actively engaged in forming such a Board and hoped to be able to report on it at the next Board meeting.

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The following persons appeared before the Board concerning the placing of the creche at Boniface Circle for the holiday season:

Charles Butler, 216 Madison Road, Eastchester
Kevin Healy, 184 Madison Road -
Richard Gast, 163 Johnson Road -
Mrs. Gregory Thompson, 46 Jefferson Road -
Robert McCreary, 10 Southwoods Lane -

Kathleen McCreary of 10 Southwoods Lane appeared before the Board concerning the request of a group of citizens to place their creche at Boniface Circle. Her statement was as follows:

"I would like to explain what this second creche application is about. Seventeen individuals and myself applied to the Village Board to erect a privately owned creche, it is not to be confused with the creche that is owned by the Creche Committee on behalf of various religious congregations and churches in the area.

"We state in our application our purpose in applying to display our creche is to celebrate our own religious convictions

and to avail ourselves of our constitutional rights for freedom of religious expression.

The creche is small, discreet and tasteful. We would propose to erect a sign indicating that the ownership is entirely private. We also propose to put up a sign indicating that the Village of Scarsdale in no way endorses this, or any other religious views. We would furthermore propose to erect a sign saying that the creche is displayed because of the constitutional rights of the owners thereof to freely express their religious views."

Mrs. McCreary continued her statement by commenting on the legal aspects of the application stating her opinion as to why permission should be given — the Constitution guarantees religious freedom, and everyones rights must prevail.

Mrs. McCreary continued: "The Constitution does not guarantee the right of all or any segment of a community not to be offended by the content of religious communications and in considering our request that the Board not consider community approbation or disapprobation as a permissible standard for a decision if that is going to result in a curtailment of our basic freedoms.

"There are some groups who have opposed the creche and who will not agree with my position, that the Board must allow the display of a private creche. But they will not say, because indeed as a matter of law they cannot say, that a private creche on public property violates the physical separation of church and state. I reiterate that point. There is no party who would appear before this forum in opposition to the creche who can definitively and conclusively state that the Constitution prohibits the display of a privately owned creche on public property. And I would like to refer in this case to the briefs submitted by Trustee Underweiser on page 4 she states '...must the Village refuse to allow the creche to be displayed on Boniface Circle under the establishment clause of the first amendment' — and on her last page, the signature page, she states 'In this area of constitutional rights it is difficult to state the Village must act in a certain manner. Therefore I conclude that the Village may deny the Creche Committee request...'.

She stops far short despite strong attempts to conclude that there is a constitutional infirmity. I also refer to a brief submitted to you by Mr. Irving Sloane who states in his opening page 'As I suggest in this memorandum, a resolution based on policy will stand up more effectively than one based on law which would in effect being an attempt to second-guess the courts...'. One more quote from Mr. Sloane — '....the Supreme Court—on page 15— has never applied the establishment clause in the context of the public display of a religious symbol.' '...the board would be ill-advised to accept anyone's prediction about the results of a court challenge...'.

'Just one more point, with respect to your own Village Attorney, Mr. Holden, I am referring now to the brief that he submitted for your consideration in 1976. This is actually a memorandum of law in support of a motion for summary judgment. He was requested at that time to defend the Village in a law suit by Mr. Rubin. And in his brief, he states "the Board of Trustee also consulted the Village Attorney and own Law Committee as to the applicable law. After considerable research, they reported to the Board as follows: "Trustee Gordon stated that the Law Committee together with the Village Attorney had been requested to research the law in this matter. The decisions found do not prohibit the erection of a creche on public property provided it is not erected by a government agency. If the government agency does not put it up it does not violate the first amendment or the constitution of the State of New York'. This is your own Village Attorney opinion. This Village Attorney is still employed. I assume that you value his opinion now just as you did in 1976. I also have found no cases intervening between 1976 and the writing of this opinion.

My point to you is that I believe that since no one in this room can stand up and definitively say it is illegal for this Board to allow a creche, privately owned, to be erected on public property. And there are those of us who would ardently argue that indeed we have a basic constitutional right to have that creche erected. Therefore, it appears to me that the proper resolution of the issue is to resolve the doubt in favor of those

who wish to exercise their right of free religion. I leave to others in the room to argue the politics of the decision. But I think the law is very clear, and in deciding whether to allow our application I appeal to your intelligence, and I appeal to your fairness and most of all I appeal to your common sense."

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Mayor Stone stated that the Advisory Council on Human Relations stated that they would prefer to see the creche placed on private or church property. "No one of us have said at any time that we do not wish to see the creche erected in Scarsdale. We would prefer in this community, to see it placed on private or church property of which three sites were available this year."

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Trustee Ullman commented:"Although there was disagreement among the members of the Law Committee as to what the requirements of the Constitution are, I think we all agreed that it has at least not been established definitively that we are prohibited from permitting the creche. The action taken by the Board was not on the basis that we had to prohibit it. The action by the Board was taken for a variety of reasons. As you know it was divided four to three, but those who opposed it, some of them may have believed that it was prohibited. I don't know that it is true that any of them did. I think the majority acted on the basis that it was a more productive attempt to preserve good feeling in the community, to restrict this particular display to private property. As you know, I voted in favor of the creche. I think to be consistent with the position I took then, I would have again to vote in favor of the creche and I can say at the same time that I'm sorry that the issue is being brought up again because I think once it's been decided by the Village Board, it's only productive of further devisiveness to try to bring it up again. I think it's very unfortunate. The recommendation of the Advisory Council on Human Relations that we permit it was based primarily on their assumption that if we did permit it we would be sued, and the issue would be definitively decided from a legal point of view—so it would no longer be a political issue on the back of

the Village Board every year, and wouldn't affect the election of candidates to the Village Board. Personally, I don't believe that that kind of a suit would produce that kind of result. I think we are very likely to come out, and Trustee Glendon disagrees with me, with a court decision which would tell us that we do not have to prohibit this but on the other hand we do not have to permit it either, and we would be left right where we are, so it becomes a question of lets say the best human relations solution for the community. This is a matter obviously on which people can differ, and this Board did differ.

I would like also to comment on this constantly recurring question of the Christmas trees, the lights and other things, which seem to many people inconsistent. There are inconsistencies in the law, I don't know how the establishment clause can be squared with the issuance of creche postage stamps by the United States government. And the court and writers on constitutional law have recognized it, there are a lot of inconsistencies, and they're not all resolvable. But as far as Christmas trees are concerned, the Christmas tree was a pagan symbol before Christmas was ever heard of. The lights and the wreaths don't bother anybody. Nobody has any intention of questioning them, certainly this Village Board doesn't. And although I had more theoretical difficulty with the question of distinguishing Christmas carols on public property from the creche, nevertheless again, nobody has objected to it, I don't think this Village Board or any member of it actually have any intention of trying to restrict anything of that sort. I simply say that because the Law Committee didn't give any specific prohibitions or directions to the Board, every member voted his conscience on what they thought was best. I think we'll have to do that again.

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Trustee Glendon: "I think there is one thing we have overlooked in this thing. The constitution says that it and the laws passed by Congress pursuant thereto are the supreme law of the land. That means that it preempts laws of Congress that are unconstitutional, preempts State laws that are in conflict with it, preempts Village laws that are in conflict with it, it

preempts and overrules policies, no matter how well meant, of good neighborliness or keeping the season peaceful or any of the other reasons that I think may have motivated some of my fellow Trustees whose opinions I respect. The Constitution is the supreme law of the land, we as government officials have to obey the Constitution. Now, the Constitution says that we shall make no laws respecting the establishment of religion, or prohibiting the free exercise of religion. And it's my view that when government is faced with a question of either fostering a religion or prohibiting people from the free exercise thereof, we had better be very careful what we do and we better not be moved simply by desires for peace and tranquility. That's not important. Most of the great constitutional questions that have arisen, have arisen out of turmoil and furor and conflict and when people are moved. They hope that maybe this year we can lay this aside and it will be the end of this. I do not think they are reasoning constitutionally and they are not applying the supreme law of the land. Now, we all know about the separation of church and state and we are all for it—that's what we are all striving for. But the Constitution says, "the State may not establish, foster or prefer any particular religion." We all agree with that. At the same time, a compelling State purpose, the State, that's us, elected public officials, may do nothing to prohibit the free exercise of anyone's religion. Now there is a tension between those two causes. What we have to decide and what we have decided before, and I guess what we have to decide tonight, does the placing by a private organization of a creche on public property where the Village does nothing but permit it to be there, accompanied by whatever signs that may be erected to show the Village has nothing to do with it, does that foster or promote the establishment of a religion. Or to put it another way, if you deny that, do you have a compelling state reason for doing it. The only argument that possibly can be made is that it violates the establishment clause. And yet I don't think there is a single Trustee sitting in this room that will tell you that they have a deep abiding conviction that the presentation of the creche as it has been for

twenty-five years in this Village violates the establishment clause.

"I think this is the single most important decision this Board will make in its tenure. I think we've made it wrong on a recent vote, I am going to vote tonight. I am assuming that this offer is in good faith, that they have a creche, and that they will put up the signs that they say they will, and that it is in good taste. I am assuming all these things, and I am going to vote for constitutional reasons—and if this was a menorah or any other symbol of any other religion, I would vote the same way. I'm going to vote for the creche."

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Trustee Ullman stated "I am not aware of any decision of the court, not to say the Supreme Court, which goes so far as to say that the State must permit this kind of display on public property. Now, Trustee Glendon argues from other situations that this is something which must be permitted, he may be right. I think what we are saying here is that no case has gone so far as to hold that we must do what you say we must do. And this was essentially the disagreement we had on the Law Committee."

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Mrs. McCreary stated that she looks to the Board to protect her rights, not to force her to enforce them.

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Trustee Underweiser asked Mrs. McCreary: "As I understand it, you wish to put the creche on public property, Boniface Circle, you have not considered and will not consider the placement of the creche on church property." Mrs. McCreary said that was correct.

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Trustee Ullman asked Mrs. McCreary if the creche was new. She replied that it was jointly owned by the group of residents asking permission to place it at Boniface Circle.

Trustee Ullman stated that the Board of Trustees was not sitting as a court of law and they didn't have to vote according to legal principles which have not been 100% definitively established. It was not for the Board to decide this question.

Mayor Stone stated that the majority of Board members were not lawyers, and did not pretend to be a court of law. They are a legislative body and it is in this capacity that they will act. If people disagree with the Board's decision then it is within their right to take the Village to court and have a legal decision made.

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The Deputy Village Clerk presented the following written communications:

Mayor Stone received a letter from County Executive Alfred DelBello thanking her for sending a copy of the Board's resolution of support for the four lane safety improvement plan for the Hutchinson River Parkway.

Mr. DelBello said he was in favor of the compromise 6-4-6 proposal and that he had considered the matter carefully and had the best interests of Westchester's residents in mind.

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Letters were also received from the following persons concerning the placement of the creche at Boniface Circle:

James Matts, County Commander of the Westchester County American Legion;

Marvin Hall, 195 Johnson Road

Marge D'Arcy, 7 Barry Road

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The Board of Trustees received a letter from 17 residents, with Cathleen McCreary as coordinator, requesting permission to erect a privately owned creche at Boniface Circle between December 18th and December 26th.

Upon motion duly made by Trustee Glendon and seconded by Trustee Bowen, the following resolution was offered and denied by the vote indicated:

Trustee Bowen made the following statement before the vote was taken. "There was an impression left in one of the statements from the audience that there was consideration of political reaction to the action of this Board on this particular issue. I personally want to say that I would be very sorry if this community reacted to the concept of the non-partisan system by choosing sides on this one particular issue. At a meeting last

Sunday, where each Trustee and the Mayor were asked to comment on their roles and responsibilities that they brought to the Village Board, I think underlying a number of statements, was the fact that we are here on this Board to serve the interest of the entire community, in a manner that we best as individuals see each individual issue as it's brought before this Board. In my opinion, it doesn't matter whether it's the creche issue, which is an explosive subject, whether it is the Polera project, Walworth Avenue, or other traffic problems. We are still faced with the responsibility as individuals—to assess what is best for the entire community and to vote independently on that matter. Contrary to the impression left by Mrs. Dohrenwend, nobody on this Board, to the best of my knowledge, knew how the vote was going to turn out when we met here on the initial discussion of the creche issue. We do not meet in private and decide how we are going to vote. We conduct all our meetings and discussions in public and vote in public. Nobody on the Board knew, some of us may have had ideas, because we do talk individually amongst each other, but nobody knew how the vote was going to turn out. I would hope, no matter what the outcome is tonight, the people in this community respect the integrity and the deep soul searching that each and every member of this Board brings to their decision on how to vote. I think you do us a disservice and certainly the community a disservice to suggest otherwise.''

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RESOLVED: that the Board of Trustees hereby gives permission for a creche to be placed at Boniface Circle for the holiday season.

AYES	NAYS	ABSENT
Trustee Bowen	Trustee Brown	None
Trustee Glendon	Trustee Falkenberg	
Trustee Ullman	Trustee Underweiser	
	Mayor Stone	

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Trustee Glendon stated: ''Madam Mayor, I would like to commend you on the fairness and openness with which you have handled this very difficult issue. As is apparent you and I disagree on the merits, I just want to say publicly, that at no time have I felt that you did anything but seek to promote open, fair and honest discussion on this very difficult issue and I commend you for your handling of the matter.''

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Mayor Stone presented the following statement recognizing the service of G. Frederick Griffiths: ''Tonight, I would like to take special recognition of an outstanding example of volunteer service for our Village and on behalf of this Board congratulate Mr. G. Frederick Griffiths on his fifty years of service as a volunteer fireman, 40 of which have been with the Scarsdale Volunteer Fire Company #3. Mr. Griffiths who moved to Scarsdale in 1921 told Mrs. Sieck in the Manager's Office, that he recalls when they would hook up horses to the fire engines—he remembers when the Harwood building was being built and when the Bronx River Parkway was not there.

''I understand he has recently been awarded his ''White Hat''—and we all know it the good guys who wear those. Mr. Griffiths who still attends meetings of company #3 regularly, wants me to be sure to point out that his company as well as the other companies have many young men involved. We think he serves as an excellent example to them and us of volunteer service.''

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Mayor Stone also reported: ''The family of Peggy Berendt, who passed away this summer, has expressed an interest in establishing a Peggy Berendt Memorial Fund. Mrs. Berendt was a longtime resident, active in community affairs and an employee of the Village in the Police Department. This fund would be set up under the auspices of the Village with its resources to be used for the betterment of the community. The fund would receive charitable contributions from friends and relatives as a way of expressing tribute to her life and good

works. This proposal has been reviewed and approved by the Village Attorney.

"If it is the consensus of the Board we can tonight direct the Village Treasurer to establish the fund. Then, the Finance Committee in cooporation with the Law Committee and the Village Treasurer can consult with the Berendt family as to the uses of any contributions."

Upon motion duly made by Trustee Brown and seconded by Trustee Ullman, the following resolution was adopted unanimously:

RESOLVED: that the Village Treasurer is hereby directed to establish a Peggy Berendt Memorial Fund.

* * * * * *

COPY
TYPED FOR PURPOSE OF LEGIBILITY

TO: BOARD OF TRUSTEES OF SCARSDALE VILLAGE
FROM: THE UNDERSIGNED
RE: PERMISSION TO ERECT A CRECHE AT BONIFACE CIRCLE

The undersigned hereby respectfully request permission to erect a "Creche" (i.e. the Nativity Scene) on Boniface Circle between December 19, 1982 and December 26, 1982. This Creche is the private personal property of the undersigned and should not be confused with the Creche owned by the Creche Committee on behalf of various Scarsdale Churches and Congregations.

All expenses and costs of the erection and dismemberment will be borne by the applicants, as well as any direct or indirect maintenance costs of the Boniface Circle premises.

Our purpose in requesting to display the Creche is to celebrate our personal religious convictions and avail ourselves of our constitutional right of freedom of religious expression.

Dated: Scarsdale, N.Y.
December 7, 1982

Respectfully submitted,

10 Southwoods Lane	Kathleen S. McCreary —Coordinator
10 Southwoods Lane	Robert N. McCreary
44 Tunstall Road	Edward Napolitano
3 Hamilton Road	Richard Cardito
224 Nelson Road	Art Messenger
224 Nelson Road	Angelina Messenger
179 Johnson Road	John P. Hegarty
179 Johnson Road	Carol A. Hegarty
177 Johnson Road	Nancy Amarillo
177 Johnson Road	Anthony Amorillo
6 Barry Road	C. Hoey
5 Tunstall Road	Eileen Brennan
5 Tunstall Road	D. Brennan

10 Tunstall Road	Loretta G. DiLorenzo
10 Tunstall Road	Robert DiLorenzo
24 Hamilton Road	Patricia Redican
24 Hamilton Road	Richard Redican

VILLAGE MANAGER

TO: BOARD OF TRUSTEES OF SCARSDALE VILLAGE
FROM: THE UNDERSIGNED
RE: PERMISSION TO ERECT A CRECHE AT BONIFACE CIRCLE

The undersigned respectfully request permission to erect a "Creche" (*i.e.*, the Nativity Scene) on Boniface Circle between December 17, 1983 and December 26, 1983. This Creche is small and tasteful and is similar to a display which has been placed on Boniface Circle for many years during the Christmas season. This Creche is private personal property and should not be confused with the similar Creche owned by the Scarsdale Creche Committee on behalf of various Scarsdale Churches and Congregations.

All expenses and costs of the erection and removal of the display will be borne by the applicants, as well as any direct or indirect maintenance costs incurred on the Boniface Circle premises. A notation will be placed on the display indicating that it is made by private citizens and that the Village of Scarsdale does not support or sponsor the display.

Among the several purposes of the undersigned in making this request are desires to join in the Village's celebration of Christmas by giving recognition to the birth of Jesus Christ the occasion and namesake of the holiday, to communicate the Christmas message of peace and goodwill to the Scarsdale community, to celebrate and express religious convictions, and to evoke a spirit of religious toleration and freedom of expression which is fundamental to the well being of our

Village and our nation, all ofwhich purposes are grounded in the undersigned's civil and Constitutional rights of free speech and religious expression.

Dated: Scarsdale,N.Y.
February 3, 1983

Respectfully submitted

_____	_____
_____	_____
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_____	_____
_____	_____
_____	_____
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_____	_____
_____	_____
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_____	_____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEONARD H. RUBIN,

Plaintiff,

—against—

VILLAGE OF SCARSDALE and
SCARSDALE CRECHE COMMITTEE,

Defendants.

ANSWER
76 Civ. 5557 (R.J.W.)

Defendant, the Village of Scarsdale, for its answer to the amended complaint respectfully alleges and shows this court:

1. Denies each and every allegation contained in paragraphs 4, 9 and 10.

FOR A FIRST SEPARATE AND COMPLETE DEFENSE

2. The plaintiff has not been deprived of any rights protected by the United States Constitution.

FOR A SECOND SEPARATE AND COMPLETE DEFENSE

3. The amended complaint fails to state a cause of action.

FOR A THIRD SEPARATE AND COMPLETE DEFENSE

4. That the Village of Scarsdale granted permission to the Scarsdale Creche Committee to use Village property in the same manner a permission is customarily granted by the Village to any other local organization. Except that the Village required the Committee to erect and maintain a sign stating that the Nativity scene was erected and maintained by the Scarsdale Creche Committee, a private organization.

FOR A FOURTH SEPARATE AND COMPLETE DEFENSE

5. That neither the intentions nor motives of the defendant Scarsdale Creche Committee, whether expresses or implied, may be imputed to nor attributed to the defendant Village.

WHEREFORE, the defendant, Village of Scarsdale, demands judgment dismissing the complaint and granting it costs and disbursements of this action.

JOHN F. HOLDEN, JR.
Attorney for the Village of Scarsdale
Village Hall
1001 Post Road
Scarsdale, New York 10583
(914) 723-3300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEONARD H. RUBIN,

Plaintiff,

—against—

VILLAGE OF SCARSDALE and
SCARSDALE CRECHE COMMITTEE,

Defendants.

---

76 Civ. 5557 (RJW)
AFFIDAVIT IN SUPPORT
OF DEFENDANT VILLAGE
OF SCARSDALE'S MOTION
FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
: ss.:
COUNTY OF WESTCHESTER)

JOHN F. HOLDEN, JR., being duly sworn, deposes and says:

1. I am an attorney at law duly admitted to practice before the United States District Court for the Southern District of New York, and am the Village Attorney for the Village of Scarsdale (hereinafter referred to as "Village"), one of the defendants herein.

2. I am fully familiar with all of the facts and circumstances relating to the subject action, and the events which preceded its commencement.

3. On November 23, 1976, the Board of Trustees of the Village of Scarsdale considered a written request dated November 10, 1976, from the Scarsdale Creche Committee (hereinafter referred to as "Creche Committee") asking permission to use a plot of village-owned land in the business

center of the Village, said plot known as Boniface Circle, for the Committee to erect and maintain a Nativity Scene during the 1976 Christmas season. A copy of this request is annexed hereto as exhibit A.

4. Similar requests, I am informed by members of the Village staff, have been received and routinely granted since 1957.

5. At an earlier meeting of the Board of Trustees, plaintiff appeared in person and indicated that, if such a request were made in 1976, he would appear before the Board in opposition to the request.

6. At the request—of the Board of Trustees, the issue of whether permission should be granted to erect a creche on said plot had been referred to the Human Relations Advisory Committee of the Village early in November. The Committee, which is comprised of citizens of different faiths, submitted its written report recommending approval on November 22, 1976. A copy of this report is annexed hereto as Exhibit B.

7. The Board of Trustees also sought the opinion of the Village Attorney and the Law Committee of the Board on the legality of permitting the erection of a creche by a private group on public property.

8. At the Board of Trustees Meeting held November 23, 1976, Trustee Frank H. Gordon, Chairman of the Law Committee, reported to the Board the opinion of the Law Committee and the Village Attorney that, under the decisions, it would be legally proper to grant the Creche Committee's request. No one present at said meeting, including plaintiff, disputed the correctness of said report. Indeed, plaintiff agreed with the legal conclusion. This oral report is summarized briefly in the Board Minutes at page 314, and is annexed hereto as Exhibit C.

9. At the same meeting, and after hearing various citizens, including plaintiff, on the issue of whether to grant the Creche Committee's request, the Board of Trustees duly adopted a resolution granting said Committee's request, and simultaneously imposing certain conditions on the proposed use of Village property. An extract from the Board Minutes setting

forth this resolution in full is annexed hereto as Exhibit D. It is the next page in the Minutes and should be read with Exhibit C.

10. The creche, owned by the Creche Committee, was erected by the Creche Committee at its sole cost and expense on or about December 15, 1976, and maintained by it at Committee expense.

11. A member of the Village Police Department, acting at the direction of the Village Manager, inspected and photographed the scene to insure compliance with the conditions contained in the resolution.

12. The Creche Committee also erected and maintained at its own cost and expense a sign beside the creche, stating, "Creche erected, maintained by Scarsdale Creche Committee, a private organization." Said sign was maintained at the creche throughout the entire time the creche was in place. Photographs of the creche and the sign are annexed hereto as Exhibit E.

13. The creche and sign remained on the Village property (Boniface Circle) until its removal by the Creche Committee on January 3, 1977.

14. At all times relevant to this action, the Board of Trustees and the officials of the Village of Scarsdale have demonstrated a scrupulous regard for the applicable case and statute law, both Federal and State, and acted in conformity therewith so as neither to promote nor establish a particular religion nor abridge the freedom of exercise of any religion.

15. Defendant Village and its officials acted in regard to the Creche Committee's request in a manner no different than it would if presented with a similar request from a similar organization.

WHEREFORE, I respectfully request that the motion for summary judgment by the Village of Scarsdale be granted in

all respects and the amended complaint be dismissed in its entirety with prejudice.

John F. Holden, Jr.

Sworn to before me this
16th day of June, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEONARD H. RUBIN,

Plaintiff,

—against—

VILLAGE OF SCARSDALE and
SCARSDALE CRECHE COMMITTEE,

Defendants.

---

76 Civil No. 5557 (RJW)

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BY VILLAGE OF SCARSDALE

FACTS

On November 23, 1976, the Board of Trustees of the Village of Scarsdale, a Municipal Corporation located in the County of Westchester, State of New York, considered a letter dated November 10, 1976, from the Scarsdale Creche Committee, an organization representing seven churches in the Scarsdale area of varying denominations. (Holden Aff., ¶3 and Ex. A)

The letter requested permission from the Board of Trustees to erect and maintain a Nativity Scene in Boniface Circle, a small plot of village-owned land located in the business center of the Village, during the 1976 Christmas season. Similar requests had been made to and granted by the Board of Trustees since 1957. (Holden Aff., ¶4)

The Board of Trustees, at an earlier meeting, had been notified by the plaintiff that he was aware of this tradition in the Village of Scarsdale and would, when the request was formally presented to the Board of Trustees, appear and oppose the granting of permission. (Holden Aff., ¶5) Aware of

plaintiff's position and desirous of maintaining the outstanding record which the Village of Scarsdale has attained in human relations, the Board of Trustees requested the Human Relations Advisory Committee of the Village of Scarsdale to make a recommendation in the event that the customary request was again received in 1976. (Holden Aff., ¶6) The Committee, comprised of citizens of all faiths, met, studied the question, and submitted a written recommendation dated November 22, 1976, which concluded:

> "The Scarsdale Human Relations Advisory Committee recommends to the Village Board that the Board accept the request of the Scarsdale Creche Committee to erect its Nativity Scene at Boniface Circle in the Village of Scarsdale during the coming Christmas season." (See Holden Aff., Ex. B)
>
> The Board of Trustees also consulted the Village Attorney and its own Law Committee as to the applicable law. (Holden Aff., ¶7) After considerable research, they reported to the Board, as appears in the Minutes, as follows:
>
> "Trustee Gordon stated that the Law Committee, together with the Village Attorney, had been requested to research the law in this matter. The decisions found do not prohibit the erection of a Creche on public property provided it is not erected by the government agency. If the government agency does not put it up, it does not violate the First Amendment or the Constitution of the State of New York. In the District of Columbia when they considered the matter, the Judge thought it would be useful if there was some sign to indicate that the Creche was erected by a private group and not a public authority. This would be a useful addition to the resolution granting permission to the Scarsdale Creche Committee." (See Holden Aff., Ex. C)

After hearing various citizens on the question, the Board, at the same meeting, on a motion duly made and seconded, adopted the following resolution:

"RESOLVED: that for the year 1976, permission is hereby granted to the Scarsdale Creche Committee to place a Nativity Scene in Boniface Circle during the Christmas season, and be it

"FURTHER RESOLVED: that an appropriate sign be affixed to said Nativity Scene stating that it is erected and maintained by the Scarsdale Creche Committee, a private organization." (See Holden Aff., Ex. D)

The Creche, which is owned by the Scarsdale Creche Committee, was erected on December 15, 1976, and thereafter maintained, by the Committee at its sole cost and expense. (Holden Aff., ¶10) It remained on Village property until it was removed by the Creche Committee on January 3, 1977. (Holden Aff., ¶13) The Committee also erected at its sole cost and expense, and maintained during the entire time the creche was in place, a sign stating, "Creche erected, maintained by Scarsdale Creche Committee, a private organization." (Holden Aff., ¶12, and Ex. E)

The instant suit was commenced by filing in this court on or about December 15, 1976. The answer of the Village was served and filed on January 4, 1977. Plaintiff asks for a declaratory judgment and an injunction against similar use of Village property in the future.

ARGUMENT

POINT 1

THE DEFENDANT, VILLAGE OF SCARSDALE, HAS NOT DEPRIVED THE PLAINTIFF OF ANY RIGHT PROTECTED BY THE CONSTITUTION OF THE UNITED STATES, NOR ANY STATUTE OF THE UNITED STATES.

In his amended complaint, the plaintiff states that rights guaranteed to him by the First and Fourteenth Amendments to

the Constitution of the United States have been abridged and that this court has jurisdiction pursuant to 42 U.S.C. 1983, 28 U.S.C. 1343 (3) and (4), and 28 U.S.C. 1331 (a).

A careful examination of the undisputed facts indicates that neither have these constitutional amendments been violated nor have these statutes any application here.

Assuming, for the sake of argument, that granting permission to a group of residents to use Village of Scarsdale (hereinafter referred to as "Village") land constitutes state action, as that term is used in construing the First and Fourteenth Amendments, the Village has still not committed a proscribed act. It has neither established a religion nor prohibited the free exercise of religion. It has not favored one religious group over another, nor even become excessively entangled in religious matters to a prohibited degree. *Allen* v. *Morton*, 495 F.2d 65 (D.C.Cir. 1973).

Section 1983 of 42 U.S.C. creates a civil cause of action in favor of a person who has been deprived of rights secured by the United States Constitution and Federal Laws. Subdivisions three and four of 28 U.S.C. §1343 give jurisdiction to the Federal Courts over such an action. They read in pertinent part as follows:

> "The district courts shall have original jurisdiction of any civil action *authorized by law* to be commenced by any person:
>
> * * *
>
> "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States, or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> "(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote." (Emphasis added)

Section 1331, of 28 U.S.C., entitled: "Federal Question; Amount in Controversy; Costs," reads in pertinent part as follows:

> "(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, *and* arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity." (Emphasis added)

These statutes indicate that when a Federal question is involved and a right secured by the U.S. Constitution or a Federal statute is being denied by any State or under color of State law, the aggrieved person may come into a United States District Court and seek relief in a civil action. These statutes do not create new rights, but merely provide a means of protecting existing constitutional and federal statutory rights if they are violated.

Plaintiff alleges violations by the Village of rights guaranteed to him by the First and Fourteenth Amendments and seeks redress through the aforementioned statutes.

The Fourteenth Amendment makes applicable to the several States the "protections" afforded by, among others, the First Amendment. Plaintiff, in conclusory fashion, alleges that "permitting the creche to be erected and maintained during Christmas periods is, has been and will be, if continued, an unconstitutional establishment of religion prohibited by the First and Fourteenth Amendments." (Amend. complaint, §9) He overlooks the chasm between "permitting" citizens to use public land in a traditional holiday fashion and "establishing" a state religion in the tradition of Henry VIII.

The Village has done nothing to the plaintiff here, or anyone else, by way of establishing a religion which must be joined or supported, nor conversely has it prevented anyone from exercising his own religious beliefs or lack of them. Plaintiff is,

therefore, not properly before this court under any theory of law advanced by him.

POINT II

THE COURT MAY PROPERLY GRANT SUMMARY JUDGMENT SINCE THERE IS NO FACT ISSUE BEFORE IT.

All of the actions of the Board of Trustees of the Village of Scarsdale are a matter of public record. There was a written request from a group of residents to use public property without any cost and expense being incurred by the Village. Prior to granting that request, the Village Board, being sensitive to public opinion and having great respect for the religious beliefs of its diverse population, requested and received a written report from its Human Relations Advisory Committee.

Since the question of the legality of its proposed action had been raised in open public meeting, the Board of Trustees consulted the Village Attorney and its Law Committee. After extensive research, the Trustee Chairman of the Law Committee reported at a public meeting that decisions indicated that erection of a creche on public property by a private group is not violative of First Amendment or State constitutional rights. It should be added parenthetically that no one, including the plaintiff who was present at that meeting, disputed the correctness of the report or legal advice given to the Board.

After the Board of Trustees granted permission to the Creche Committee to erect the creche, that Committee did, at its own cost and expense, erect and maintain the Nativity Scene with the sign stating, "Creche erected, maintained by Scarsdale Creche Committee, a private organization," which sign remained present as long as the Nativity Scene was displayed. The Nativity Scene was subsequently removed by its owner, the Creche Committee, again at its expense.

The plaintiff has attempted to ascribe certain motives to the defendants in this action. The defendant, Village of Scarsdale, has in a fourth separate and complete defense in its answer stated: "that neither the intentions nor motives of the defend-

ant, Scarsdale Creche Committee, whether expressed or implied may be imputed to nor attributed to the defendant, Village." This is still our position. It has permitted erection of a creche on Village property since 1957. The Board of Trustees permitted a group of residents to use Village property in the same manner as it would permit any other similar group seeking such permission. The Village had nothing to hide and has hidden nothing. There is no question of fact before the Court—no material allegation of fact in the Amended Complaint is controverted by the Village. The Court is free to determine this action as a matter of law and grant summary judgment for the Village.

POINT III

THE ACTION TAKEN BY THE VILLAGE OF SCARSDALE WAS LAWFUL.

No one, including the plaintiff during his numerous appearances before the Board of Trustees, has been able to point to a single authority, State or Federal, which would prohibit what the Village has done.

Similar fact situations were before the Supreme Court of the State of New York, County of Westchester, on two occasions. In *Baer* v. *Kolmorgen*, 131 N.Y.S. 2d 230, 14 Misc.2d 1015 (Sup.Ct. Westchester 1958), a school district permitted a group to use its property for the erection of a creche at the group's sole cost and expense during a time when school was not in session. Proof was taken and the court found that, similar to the facts in this case, there had been a long tradition of granting requests to various groups to erect signs or symbols on the school lawn. The court further found that no similar privilege had been requested by any other religious group nor been denied by the school board. The court stated:

> "the Creche is undoubtedly a religious symbol. In viewing it, however, we are all free to interpret its meaning according to our own religious faith. If any public body were to limit that freedom, or if any public institution

> were to give instruction as to its meaning there would, unquestionably be a constitutional violation. That, however, is not this case. Here the school board has done no more than make a small portion of its property available for the display. To that extent, they have accommodated a religious though non-denominational group. However, the accommodation of religious groups is not per se unconstitutional." 181 N.Y.S.2d at 238.

The court then dismissed the complaint which sought a permanent injunction against the erection of the Creche.

The second case which also arose in Westchester County was *Lawrence* v. *Buchmueller*, 243 N.Y.S.2d 87, 40 Misc.2d 300 (Sup.Ct. Westchester 1963). Certain parents, whose children attended public school, brought a declaratory judgment action against the school district, alleging that the district had no legal or constitutional authority to permit a Christmas Nativity Scene to be erected on its property.

In denying the plaintiff's motion for summary judgment, the court stated in relevant part:

> "It is the judgment of this court that the resolution of the Hartsdale School Board permitting the erection of a Creche under the circumstances here present, does not constitute the establishment of religion." 243 N.Y.S.2d at 90.

The circumstances referred to by the court were that school was not in session while the creche was in place, and that there was no involvement of school personnel nor use of public money. Similarly, no public officials or public money was involved in the erection and maintenance of the Creche in this case.

The leading Federal case dealing directly with the question of the erection of a Nativity Scene on public lands is *Allen* v. *Morton*, 495 F.2d 65 (D.C.Cir. 1973). Plaintiff-appellants appealed a judgment after trial for defendant-appellees in the district court from the case of *Allen* v. *Morton*, 333 F.Supp. 1088 (D. D.C. 1971). The record facts on appeal included

partial sponsorship by an agency of the United States Government (*i.e.*, the National Park Service) and government officials' participation in planning and organization committees of the Christmas Pageant of Peace.

The Court of Appeals held, essentially because of the participation on committees, that the government itself was excessively entangled with religion and thus reversed the district court's judgment. The Court enjoined the government's participation in the Christmas Pageant of Peace which, among other things, erected and maintained the Nativity Scene. The Court made it clear, however, that the mere use of Federal land for the erection and maintenance of a Creche without the use of Government funds or personnel was *not* prohibited by the Constitution of the United States or any Federal statute. See both Tann, J. and Leventhal, J. opinions. The Court stated that if government land were so used and "the Government decides to terminate all sponsorship or connection with the Pageant, appropriate placques should be ordered by the District Court, as set forth in Judge Leventhal's opinion." 495 F.2d at 67. In his opinion, Judge Leventhal stated that "[t]hese placques should be designed for maximum exposure and readability to the sole purpose of stating that the government in no way sponsors the Pageant of Peace event." 495 F.2d at 90-91.

Similarly, in the present case, the Board of Trustees of the Village passed a resolution requiring the Creche Committee to affix a sign "to said Nativity Scene stating that it is erected and maintained by the Scarsdale Creche Committee, a private organization" and such a sign was affixed by the Committee. (See Holden Aff., Exs. D and E). The effect of such a sign surely indicates that the Village of Scarsdale was neither sponsoring the Creche, promoting a religious view nor profaning the symbols of any religion.

In simple terms, this creche in Boniface Circle in Scarsdale was a part of a traditional celebration of the Christmas season. Village offices are closed on Christmas Day, an illuminated star is erected on Bellevue Hospital, the U.S. Postal Service issues a stamp depicting a Nativity Scene. Christmas trees are erected and decorated in public buildings everywhere, including the White House. None of these is the establishment of religion so abhorred by the Founding Fathers. In short, plaintiff has not pleaded and cannot prove any deprivation of a Constitutional or a statutory right.[1]

CONCLUSION

The motion for summary judgment in favor of the Village of Scarsdale should be granted in all respects, and plaintiff's amended complaint should be dismissed in its entirety.

Respectfully submitted,

JOHN F. HOLDEN, JR.
Village Attorney
Scarsdale Village Hall
1001 Post Road
Scarsdale, N.Y. 10583
(914) 723-3300

Attorney for Defendent
Village of Scarsdale

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1 Significantly, the Court of Appeals, per Leventhal, had stated in a prior appeal in the same case, Allen V. Hickel, 424 F.2d 944, 948 (D.C. Cir. 1970) that "the Government may depict objects with spiritual content, but may not promote or give its stamp of approval to such spiritual content."

VILLAGE OF SCARSDALE
Village Hall
Scarsdale, New York 10583
(914) 723-3300

Lowell J. Tooley
Village Manager
November 1, 1976

Mrs. John Kirk
16 Barry Road
Scarsdale, New York

Dear Ellie:

Further to my telephone call of October 25, the enclosed correspondence will give you a glimpse of past action and concern on the matter of the location of the Creche at Boniface Circle.

While it is somewhat difficult to refer a non-item to the Committee on Human Relations, it is presently the opinion of various members of the Board of Trustees that the location of the Creche in Boniface Circle this year is a subject that could well be explored by your Committee. Two people who have been especially concerned on this subject are Father Sandberg of IHM and Reverend Mr. Merlin Meyer of Trinity Lutheran.

While the Scarsdale Clergy Committee discussed this at its most recent meeting, it is presently expecting to consider position papers by various members of the clergy at a later meeting, perhaps in about a week and a half or two weeks. In addition, Trustee George Szabad, who is an attorney, may be helpful from the standpoint of court decisions on this subject.

Since this is undoubtedly not a legal question, what the Village Board would find helpful is your appraisal of how the population of Scarsdale feels about using Boniface Circle for locating the Creche.

Yours very truly,

Lowell J. Tooley
Village Manager

LJT:JFS
Enclosures (6)
cc: Board of Trustees

16 BARRY ROAD
Scarsdale, New York 10583

November 22, 1976

Honorable Boine T. Johnson
Mayor, Village of Scarsdale
18 Fairview Road
Scarsdale, New York 10583

Dear Boine:

The Human Relations Advisory Committee met on Thursday evening, November 18 at Village Hall to discuss and formulate a recommendation about placing the Creche at Boniface Circle. The recommendation and reasons for this are included in the enclosed attachment. If you have any questions about this or need further information, please let me know.

Some members of the Advisory Committee will be attending the Village Board meeting on Tuesday, November 23 in case any additional support is needed.

Sincerely,

Eleanor H. Kirk
Chairman, Human Relations
Advisory Committee

November 22, 1976

TO: Honorable Boine T. Johnson
and Members of the Village Board

FROM: Human Relations Advisory Committee
Eleanor H. Kirk, Chairman

The Human Relations Advisory Committee met on Thursday evening, November 18, with six of the seven members in attendance, to consider the question of locating the Creche at Boniface Circle and to appraise how the people of Scarsdale feel about this. This review by the Committee was requested by the Village Board of Trustees and transmitted to the Committee in a letter of November 1 by Lowell Tooley, Village Manager.

BACKGROUND INFORMATION:

In considering this matter, the Committee reviewed pertinent correspondence of 1974 and 1975 which had been given to the Committee by the Village Manager. In addition, the November 10, 1976 request of the Creche Committee to the Village Board was made available to the members as well as other related correspondence. In advance of the meeting, each member of the Advisory Committee had discussed the matter informally with a large number of persons in the Village. This represented a broad survey of religious, ethnic and other groups and individuals to ascertain current feelings on the matter. Other material available to the Committee included memoranda and reports as well as newspaper articles from other communities in Westchester and elsewhere where there had been public policy review concerning the location of a Creche during the holiday season. All of this provided extensive background information for the Committee and helped it in making its recommendation to the Village Board. The Committee is making its recommendation with the assumption, based on the information available to us, that there are not now or will not be any illegalities involved.

RECOMMENDATION:

The Scarsdale Human Relations Advisory Committee recommends to the Village Board that the Board accept the request of the Scarsdale Creche Committee to erect its Nativity Scene at Boniface Circle in the Village of Scarsdale during the coming Christmas season.

As a result of the discussions held by each member of the Advisory Committee with fellow residents, the Committee feels that, since the Creche has been located at Boniface Circle for so many years during each Christmas season, its presence there is accepted by a majority in the Scarsdale community, regardless of religious beliefs, as a long-held tradition of the Village. The Committee is aware that some of the residents, including some of the clergy, believe the Creche should be located on other than public property. However, the Committee believes that even among those who would rather not have the Creche located on public property, all or most want to support a decision which will have the most harmonious effect on relationships within the community. The Advisory Committee believes that, since this request by the Creche Committee is not a new one and is based on an accepted custom followed over many years, its tradition supports the strong sense of community in our Village.

The Advisory Committee further believes that in recommending that this tradition be maintained at this time, it is supporting and affirming the high standards of human relationships which have always existed among all groups and individuals in Scarsdale.

Members of the Human Relations Advisory Committee
June Branche
Lynn Clark
Richard Gerloff
Rowland Miller
Harry Sternberg
Peter Strauss
Eleanor Kirk—Chairman

March 21, 1978

Report of the Advisory Council on Human Relations 1977-78

To The Scarsdale Village Board of Trustees:

This report covers the 1977-78 activity year of the Advisory Council On Human Relations.

The Council dealt with two primary concerns during this period: one, the *Boniface Circle Creche*, was largely passive; and the other, The *Community Residence for the Retarded* is current and quite active.

Since the Creche question was in the hands of the Court for most of 1977, there was little that had to be or could be done. However, several informal approaches were made to representatives of the Clergy Club to determine whether this body had reached any compromise from which the Church property rotation idea could be developed further. It was clear that there still was no [missing copy] agreement within the Clergy Club prior to the 1977 Christmas Season.

Clearly, everyone was waiting for The Court to act one way or the other. The Council Chairman requested the Village to approach The Court in early Fall to suggest that a prompt decision would improve chances for dealing with any community reaction to its decision—one way or the other. The Court did not respond and issued its decision—a non-decision—virtually concurrently with the Creche Committee's annual request in November. Fortunately, those opposed to the Creche's location did not make a major issue of it at that time, so that the Council's active involvement was not called for.

At its meeting on November 3, 1977 the Council agreed that if the Village Board were to ask it for a recommendation again, absent any Court decision to the contrary it would reiterate the recommendation made in 1976. The Council, as then constituted, felt that so long as no generally satisfactory alternative was possible, barring the Creche from Boniface Circle after so many years would be destructive to the best human relations interests within the community.

The Council remains available to the Board concerning this issue should future events require its services.

The Community Residence for the Retarded is a matter currently involving the Council at the request of the Board. The Council's Chairman was called to a briefing session conducted by the Westchester County Transitional Committee at the home of Trustee Richman on Oct. 6. The Council met Nov. 3 for a full scale educational briefing and discussion conducted by County, State, and WARC officials. On Dec. 12, the Council visited a Yonkers Community Residence for a tour and discussion with that home's Community Advisory Board. Individual members of the [missing text] shop in White Plains to round out the initial educational phase for Council members.

The next Council meeting was held in conjunction with Presidents of all major Village organizations at a session called by Trustee Jensen for Feb. 6 at Village Hall. Another presentation by County, State and WARC officials was made at this meeting, followed by a lengthy question session and a decision as to how we should proceed to achieve a community-wide general education on the subject.

It was decided to conduct a minimum of five neighborhood meetings and to ask a few major organizations to include the subject on their program agendas.

As of this date, one meeting, The Village Club's program, has been held (March 20) and six other meetings have been scheduled, and one other is a possibility.

The PT Council and SNAP Boards agreed to have the elementary school PTA's and a combination of neighborhood associations coordinate their forces for five neighborhood meetings.

It was agreed that all meetings should be concluded before the end of April since the site selection process had already begun.

This effort by Scarsdale to pave the way for a Court mandated [missing text] is a first within the State. It has had major organizational difficulties. On the one hand, Council members were trying to educate themselves about the program

at the same time it was the Council's responsibility to set up educational meetings within the community. On the other hand, the "educators" and resource people from the County, State and WARC were largely unprepared to deal with the unusual request from Scarsdale to educate the community before the fact.

The coordination of work by the Transitional Committee and the Council was also a problem since the former had been involved and had momentum long before the Council became involved. Thanks to the efforts of Trustee Jensen, this coordination now exists.

The major problem in the educational area remains one of producing positive, dynamic, and effective meetings. The Village Club program became the test case. It was given every chance of success by a superb organizational job by the Club program chairman who is also a member of the Council, Lynne Clark. The presentation did reveal some major weaknesses and improvement efforts are under way in an attempt to make subsequent meetings more effective.

Meeting Schedule (subject to change):

Quaker Ridge	April 4
Heathcote	April 5
Town Club	April 6
Greenacres	April 11
Fox Meadow	April 13
Edgewood	April 26

In addition to the general meetings, the Council recognizes that it may have to deal with controversies stimulated by the meetings. As the program becomes better known it will tend to shake out more opposition. In particular, when a site is selected the Council will have to be sensitive to the concerns and problems raised in that immediate area—without at the same time overlooking the possible implications of this project on the larger community.

* * * * * *

As this report is being submitted the Board has announced that two of our Council members have completed their service—Eleanor Kirk and June Branche. Both have given generously of their time and their wisdom to the Council and deserve the praise of the Board and the community. Ele also served the Council as its Chairman during an important transitional period in its relationship to the Board, was skillful in her leadership and in securing Board action on certain human relations problems before they produced major confrontations.

June's dedication and responsible work are well known to [copy omission] she also has been in the forefront in preventing major confrontations [copy omission] educate Village officials about existing human relations problem.

Finally, the Council has been deprived of another of its members, Chuck Sims, after a brief but productive term. Chuck's attentive interest and involvement in the early education sessions on the Community Residence project produced valuable insights for all Council members. Fortunately, he leaves the Council for the only acceptable reason—his election to The Board of Trustees where he as well as the entire Board can continue to rely on the Council for service where and when necessary.

Respectfully submitted,

Peter Strauss,
Chairman

TO: HONORABLE GRADY E. JENSEN AND THE BOARD OF TRUSTEES

FROM: THE ADVISORY COUNCIL ON HUMAN RELATIONS

SUBJECT: THE CRECHE AT BONIFACE CIRCLE

Due to increased and diverse comments over the approval of the Creche's placement in Boniface Circle during the 1979 Christmas season, the Council was asked by the Board of Trustees to look thoroughly into the Creche situation and to report to the Board when the request came in 1980. This is a report of the Council's findings and a recommendation as to future Board action on this issue.

BACKGROUND INFORMATION

Historical Information: The Creche has been placed in Boniface Circle for approximately two weeks every Christmas season since about 1957. The figures are wood carvings made by Mr. Robbins, a well known Scarsdale sculptor. The cost of $1,625 was donated by various churches in the area. The erecting and maintaining of the Creche each year is covered by contributions from member churches to the Scarsdale Creche Committee. The "dues" are $25 which cover all costs including insurance and the purchase of green to create an appropriate setting. There is no public cost. The Creche is stored in a private home when not on display. The Creche Committee complies with any directives given by the Village Board. A sign, prominently displayed, states that "This Creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization."

The Creche Committee: The Scarsdale Creche Committee is a private organization with representatives from churches in the area. The current churches represented are:

Current Representative	Address	Church	How Chosen
Patricia Curran (Chairman)	1 Rochambeau Road Scarsdale	Immaculate Heart of Mary	Guild Representative
Cynthia Barsuhn	307 Boulevard Scarsdale	Trinity Lutheran	Guild Representative
Maria Pedulla	63 Brendon Hill Road Scarsdale (Yonkers)	Our Lady of Fatima	Pastor Appointment
Grace Fellows	193 Old Wilmont Road Scarsdale (Eastchester)	Church of the Good Shepherd	Church Council
Teresa Vohnout	23 Lakeview Avenue Scarsdale (Eastchester)	Grace Lutheran	Church Council
Mary Tully	23 Leatherstocking Lane Scarsdale	Church of St. Pius X	Pastor Appointment
Joan Mann	24 Sherwood Place Scarsdale (Edgemont)	Scarsdale Community Baptist	Deacons Appointment

Scarsdale Congregational Church, Greenville Community Church, Hitchcock Presbyterian Church and the Church of St. James the Less no longer send representatives to the committee. It is interesting to note that the current composition of the committee includes only three Village residents.

Suit Against the Village, December, 1976: Leonard H. Rubin, a Scarsdale attorney with the New York Civil Liberties Union brought a suit against the Village for removal of the Creche from Boniface Circle. (Mr. Rubin has lived at 34 Farley Road since November 1975.) The suit which was filed in district court in New York City stated that authorization by the Village violated the 1st and 14th amendments. Judge Robert J. Ward dismissed the case ruling that the Federal Court has no jurisdiction over local municipalities. During 1977, 1978 and 1979 permission was granted to place the Creche at Boniface Circle.

EVENTS OF SPRING, 1980—FALL, 1980

Meeting of the Council with the Scarsdale Creche Committee: On may 29, 1980 the Council met with members of the Scarsdale Creche Committee. There was an excellent dialogue regarding mutual concerns. There was lengthy discussion regarding the potential human relations conflict resulting from the request. Last season's Letters to the Editor were distributed. Alternative sights for the Creche were considered:

Creche on Church Property: Church property was suggested as a more suitable place for the Creche. Many churches have offered their grounds for the display. The Committee rejects this option because in their opinion no church property has a place which fits the purpose for which the Creche was made: a central place where those who so desire can pause for a few moments and enjoy a lovely piece of art. The Creche Committee feels that the topography of the area churches is not suitable, that many churches already have Creches, and that you cannot enjoy the beauty of this Creche when passing by in an automobile.

Creche on Private Property: Placing the Creche on private property was discussed. The Council considered three locations and the Committee agreed to consider this recommendation if permission were granted by the owners. The Frog Prince Proper and the Common Market (soon to be the Manhattan Bank for Savings) both declined the offer made by the Council Chairman over the summer. The station area was investigated and initial talks with the MTA were favorable. However, in mid-discussion it was learned that the Village owned to within three feet of the station platform. No other points in the Village were deemed suitable.

The Creche Committee was grateful to have had a chance to talk to an official Village group. The meeting was beneficial in that all issues were aired and more fully understood. The

Council Chairman has kept the Creche Committee Chairman informed regarding all events since the May meeting.

Meetings with Local Clergy: The Council Chairman met with local clergy over the summer and into the Fall. This included a presentation to the Clergy Club at their October luncheon gathering. At these times complete information was given regarding all aspects of the Creche issue. It was abundantly clear that the clergy has as diverse feelings as the community. No helpful suggestions were forthcoming, but again the dialogue was considered important as far as human relations are concerned.

Meeting of the Council Chairman with the Creche Committee, November 2, 1980: The chairman of the council made an official request to the Creche Committee to place the Creche on church property. (See attached letter) At this time the chairman gave each committee member copies of last season's letters to the editor and thoroughly discussed the council's reasons for making the request. The Scarsdale Creche committee voted unanimously to deny the request.

DIFFERING POINTS OF VIEW ON THE CRECHE IN BONIFACE CIRCLE

Pro

1. Long tradition in the community, therefore should be continued.
2. Village should permit free exercise of religion which the first amendment protects. By doing so, it is not promoting religion.
3. Previous court decisions uphold the legality of public land for a Creche provided it is not erected by government or at government expense.
4. All religious symbols should be displayed. More symbolism is needed in our lives. The Village should make room for all kinds of expression.
5. Removal of the Creche from Boniface (or denial of the request) would cause more unrest than letting it remain.

Con

1. Violation of the constitutional principle of separation of church and state.
2. Use of public land for a religious statement is inappropriate in Scarsdale.
3. Potential division of the community.
4. If Creche makes certain members of the community hostile (however small the number) that it should not be on public property; it defeats the purpose of the Creche.

RECOMMENDATION TO THE BOARD OF TRUSTEES

All members of the Council feel that the Creche would be placed more appropriately on non-public property. All possible avenues have been explored. Church sites are not acceptable to the Creche Committee and suitable private property locations are not available. After consultation with the Village Attorney, the Council sees no legal problem as no public time or money is involved. The Council agrees unanimously that it is less devisive to good community relat· ; to allow this long standing tradition to be maintained rather than to deny permission. For these reasons, the Council makes the following recommendation:

THE ADVISORY COUNCIL ON HUMAN RELATIONS RECOMMENDS THAT THE VILLAGE BOARD OF TRUSTEES ACCEPT THE REQUEST OF THE SCARSDALE CRECHE COMMITTEE TO ERECT ITS CRECHE AT BONIFACE CIRCLE DURING THE 1980 CHRISTMAS SEASON.

Lynne B. Clark (Mrs. Merrell M.)
Chairman, Advisory Council on
Human Relations

November 20,1980

To: Mayor Jean Stone and the Board of Trustees

From: The Advisory Council on Human Relations

Subject: The Request of the Scarsdale Creche Committee to Place the Creche at Boniface Circle

RECOMMENDATION TO THE BOARD OF TRUSTEES

Members of the Council believe that the Creche should be placed on non-public property and have continued to encourage the Scarsdale Creche Committee to seek sites other than Boniface Circle or to withdraw their request. As no other locations are available in the center of the Village where the Creche Committee will be seen easily and church sites are not acceptable, the Creche Committee will bring their request again to the Village Board. The majority of the Council believes that it is less devisive to good community relations to allow this long standing tradition to be maintained rather than to deny permission. Therefore, the Council makes the following recommendation:

THE ADVISORY COUNCIL ON HUMAN RELATIONS RECOMMENDS THAT THE VILLAGE BOARD OF TRUSTEES ACCEPT THE REQUEST OF THE SCARSDALE CRECHE COMMITTEE TO ERECT ITS CRECHE AT BONIFACE CIRCLE DURING THE 1981 CHRISTMAS SEASON.

Lynne Clark, Chairman
Mercedes Broderick
Eleanor Finney
William Flynn
Rita Greenland
Joan Kennedy
Jack Nusbaum
Raphael Scobey
Peter Strauss

November 3, 1981

Last years detailed report is attached for reference.

Advisory Council on Human Relations
Village of Scarsdale
Scarsdale, New York 10583

Mayor Jean Stone and the Board of Trustees
Village of Scarsdale
Scarsdale, New York 10583

November 18, 1982

Subject: Recommendation regarding the Creche at Boniface Circle

The Advisory Council on Human Relations appealed once again to the Scarsdale Creche Committee to eliminate the Creche controversy by not bringing their request to the Village Board of Trustees and by finding a permanent non-public site for the display. The Council's concern is the harmony of all the people of Scarsdale. There was no doubt in the minds of all Council members that the recommended action to the Scarsdale Creche Committee would be in the best interests of the Village. Any other patch would lead to more controversy, more acrimony between residents of opposing views, more unpleasant publicity for the Village, the likelihood of expensive legal action and lasting bitterness.

Unfortunately, as in the past, our unanimous and earnest plea did not dissuade the Creche Committee. Accordingly, as asked by the Trustees, the Advisory Council of Human Relations voted on whether or not to recommend to the Trustees granting the request. This was a most agonizing choice. Either "yes" or "no" causes a loss. It is a no-win situation.

The Council was split on the issue. Three recommended denial. Five recommended approval. Those who recommended approval expressed the hope that, by proceeding with the display, a likely suit would result in a comprehensive and final hearing on the matter in a court of law, thereby freeing the people and their elected officials of what has been a chronic, holiday season, emotional crisis. Both "yes" and "no" members sought the same objective, each believing the path selected would more likely establish a permanent undisputed pattern. This objective was our central concern. Other

issues of philosophy or morality or politics were considered less important than permanence as a determining factor in stopping annual discord. The "no's" believe the Trustees can accomplish this result. The "yes's" believe the Trustees cannot accomplish this result but that the court will, one way or the other.

Lynne Clark, Chairman
Mercedes Broderick
Eleanor Finney
William Flynn
Rita Greenland (Absent)
Joan Kennedy
Roseanne Raab
Jack Stern

November 29, 1979

The Scarsdale Creche Committee
c/o Mrs. John J. Curran
One Rochambeau Road
Scarsdale, New York 10583
Dear Mrs. Curran and Members of the Committee:

At the Village Board meeting of Novembver 27, permission was granted by the Board of Trustees for the Creche Committee to erect a creche at Boniface Circle during the coming Christmas season.

Permission has been granted on the following conditions:

1. A similar sign must be installed, as last year, to read, "This creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization."
2. The Scarsdale Creche Committee shall do all the necessary work in erecting and taking down the creche at no public expense.
3. Boniface Circle must be restored to its previous condition after the creche has been taken down and removed.

It was strongly recommended by all the Trustees that the Creche Committee consider rotating the creche among various Village churches in future years.

Very truly yours,

Richard F. Herbek
Assistant Village Manager

RFH:jb

December 11, 1980

Mrs. John J. Curran
1 Rochambeau Road
Scarsdale, New York 10583

Dear Mrs. Curran:

Your request that the creche be erected on Boniface Circle again this year was acted upon at the December 9, 1980 meeting of the Board of Trustees.

As you are well aware, the request was approved by a 4 to 3 vote of the Board.

Permission has been granted on the following conditions: the Creche Committee shall 1) prominently display a sign which reads "This Creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization", 2) provide the Village with satisfactory liability coverage, and 3) erect, remove and clean up after the display at no cost to the Village.

Mayor Jensen pointed out that in light of the division caused by this issue, the Board strongly urges that next year the Committee erect the creche at a location other than Village-owned property.

Very truly yours,

Christopher J. Russo
Administrative Assistant

CJR:aew

May 13, 1982

TO THE BOARD OF THE SCARSDALE FOUNDATION
FROM: JEAN STONE, MAYOR OF THE VILLAGE OF SCARSDALE

On behalf of the Board of Trustees of the Village of Scarsdale and, most particularly, myself, I want to thank you for your consideration of the Heritage Plaza proposal that I've sent to you.

I have been able to give more background information leading up to this proposal to Mrs. Stix and Mr. Ullman, and I understand they presented the proposal to you at your May 5th meeting. I am grateful to them for the extra time they have given to this, particularly, because like all of you, their discretionary time is limited and highly valued.

I hope you will find it helpful if I add my own thoughts and experiences to theirs. I am also attaching a copy of a letter from the Chairperson of the Creche Committee, Mrs. Pat Curran.

In your study of our community future, I'm sure it is apparent to you, as it is to all of us who serve the Village in various capacities, that ours is a community rich in ethnic, religious, cultural and political mix. In my experience, we cover the complete range. We are very liberal—we are very conservative. We are religiously diverse and our heritages vary greatly.

For the past few years, when the Creche Committee has come to the Village Board for permission to erect the Creche on Boniface Circle, the vote of the Trustees has been close one way or the other. I suspect it will continue to be so, varying from year to year. Whereas no one has been opposed to the concept of displaying the Nativity scene during the Christmas season, many people feel that a religious display properly belongs on private property, regardless of conflicting legal interpretations. The Creche Committee does not enjoy the procedure whereby they must apply annually to the Board and would like a resolution once and for all. I think the community

would agree. The Village Board is not in a position to resolve it.

Since last January we have been trying to find an answer—an acceptable "do-able" compromise—not a passing-the-buck—that would answer this ongoing disruptive, destructive situation, as well as offer an added community amenity as well. Our concept of a Heritage Plaza was the result. In the earliest stages we shared this concept with the Creche Committee, the Advisory Council on Human Relations, other clergy, such as Rev. Scottie Griffin and Rabbi Jack Stern, and, universally, the concept has been well received. I have also touched base with the Chairmen of the Friends of the Parks and the Scarsdale Environmental Council who, because they are still holding this as confidential information, have not discussed it with their Boards. However, their initial reaction was favorable.

Unfortunately, we have had to send the permissive legislation to Albany at such a late date due to the checking of deed restrictions, that we were pushed into a "chicken-or-the-egg" procedure of having to use your name as the recipient of this property although we are all quite clear that no decision has been reached on your part. We also made that clear to the sponsors of the bill. I appreciate your cooperation in allowing us to proceed in this way. There are far too many obstacles in the way of this legislation for us to be optimistic about its passage. Even if it is passed, it is only permissive—we *may* proceed—not we *will* proceed—with the proposal.

We will, of course, go to Public Hearing and would do so even if not required by law, as public acceptance of this idea is what would make it viable. Of course, no plan is perfect or without some problems and some concerns to be addressed. Considering the alternative, however, I regard this as a constructive, positive and forward-thinking proposal. It answers the community need with the further opportunity of enriching our community life.

I'm also attaching a copy of a memo from Trustee Martin Bowen. Whereas at that time he suggested the Chamber of Commerce as the recipient, all of the Board is now agreed that

the Foundation is the agency that is uniquely qualified for this type of community role.

Please feel free to call me with any comments or questions you may have regarding Heritage Plaza. It is a project about which I care deeply. Since so many people have now been exposed to this idea, I feel the correct course is to tell the residents that the bill has been filed, even if its success is far from certain. I plan to do this at one of our two remaining May meetings . . . the 18th or the 25th.

My sincerest thanks for your help in this matter.

Jean Stone
MAYOR

April 29, 1982

Dear Mayor Stone,

Thank you for your letter which I received yesterday. Although there seems to be a great deal of work still to be accomplished your letter indicated that much has already been done. I am planning to duplicate your letter and will send sufficient copies to each of the Creche representatives so they may share this information with their pastors, ministers or Church Boards.

Speaking for myself, I was pleased with the tone of and the outcome of the meeting we held over in the firehouse. It indicated not only a concern over the question of the Creche but a sincere desire on the part of everyone to resolve the problem in a manner that will be agreeable to all.

It is my hope that the plans that are being worked on at present will become a reality. It is my belief that if we accomplish this, Scarsdale's "Heritage Plaza" will become a model to many other communities.

Again, my thanks for your efforts.

Sincerely,

Pat Curran

DATE: 3/15/82

TO: Mayor Stone & the Board of Trustees

FROM: Martin Bowen

SUBJECT: Heritage Plaza

The following memo formally proposes an idea that, as some of you know, I have been mulling over since last November.

There is no question that this approach is recommended to take the Creche issue out of the public limelight. In my opinion, just because we want it to, this issue is not going to go away. It has been an issue for years in Larchmont where it is up for vote of their Village Board year-after-year and has been voted in and out depending on the composition of the Board. Unfortunately, in Scarsdale, such a situation would in my opinion aggravate divisiveness and subject the community to unnecessary, and unpleasant, publicity.

The preferred solution, of course, would be to find a suitable location on private property which would meet the criteria of the Creche Committee for "downtown" visibility and would be an acceptable site to that committee. This has been diligently pursued in the past without much success. Given the situation in 1981, it should be pursued once more on the assumption that a private establishment might now be receptive to offering a site just to avoid such unpleasantness again.

However, failing that, this plan could form the basis of discussion for a viable alternative. It is put forth with my understanding that there is no law that precludes the private placement of religious displays on public property and that, in fact, there is case law precedent affirming its legality. As long as that remains the case, I urge my associates to look for a solution to this problem which can help restore good will and which can take out of public hearing this disruptive issue. I believe that my recommended approach allows for community tolerance of varying beliefs.

March 12, 1982

Proposal for the Establishment of Heritage Plaza

This memorandum recommends the establishment of a small plaza at either Boniface Circle or Chase Road Park, to be known as Heritage Plaza. This plaza would provide display space for any bona-fide organization, the majority of whose members live in the Village of Scarsdale. It would be used to promote an aspect of the United States political or religious heritage celebrated by a recognized national or religious holiday where some or all, Americans are released from work or school.

Examples of such recognized holidays include, but are not limited to,

Columbus Day	Thanksgiving
Washington's Birthday	Christmas
Martin Luther King Day	Easter
Independence Day	Rosh Hoshanna
Memorial Day	Election Day
Labor Day	

Days with primarily commercial significance such as Valentine's Day, Halloween, Mother's Day and any fund-raising commemoration such as Community Chest Day would not be included as recognized holidays for this purpose.

The plaza would be leased to the Scarsdale Chamber of Commerce, who would receive all applications for use of the plaza under the following general considerations:

1. Applications would be considered for any given calendar year in order of receipt in that year. Each application must be described by photograph or artist's rendering including all proposed physical dimensions. Only one display would be accepted for each required holiday.
2. Each initial application must be accompanied by verification of the residential makeup of the organization

or by a petition signed by 100 registered Village residents. Subsequent applications must be signed by a majority of the organization's governing board or by 100 registered Village residents.

3. Each application must be accompanied by whatever indemnification certification the Scarsdale Chamber of Commerce and/or the Village might require.
4. All costs and liability for any display are to be borne by the private organization making application to the Chamber of Commerce.
5. The Chamber of Commerce, through majority vote of its governing board, may reject any display it deems is not in good taste, in the generally-accepted meaning of that term.

The role of the Village, through the Village Manager's office, would be limited to:

1. Establishing initial guidelines for use of the plaza as these guidelines relate to size of displays allowed, necessary signing and indemnification needed and rules for construction and dismantling of any displays.
2. Review of design specifications and approval based on safety considerations.
3. Maintenance of the plaza grounds consistent with the character of the land around it.

The lease to the Chamber of Commerce, which would be at no rental charge, could be terminated in one of two ways:

1. By the Chamber in writing to the Village Board to be effective at midnight, December 31, of that calendar year.
2. By the Village to be effective on a date set by resolution of the Village Board to accommodate a plan passed by resolution of that Board which would change the character and/or use of either Boniface Circle or Chase Road Park, whichever site the Heritage Plaza is contained within.

Heritage Plaza is proposed as a place where the historical and religious values of our society can be celebrated in a quiet, dignified manner through displays that can be enjoyed or respected by all Scarsdale residents.

MEMO TO: BOARD OF TRUSTEES
CAROL STIX, PRESIDENT, SCARSDALE FOUNDATION
PAT CURRAN, CHAIRMAN, CRECHE COMMITTEE
HUMAN RELATIONS ADVISORY COMMITTEE
LOWELL J. TOOLEY, VILLAGE MANAGER

FROM: MAYOR STONE

RE: CHASE ROAD PARK BILL

July 1: Cecile Singer, of Gordon Burrows' office, called today to tell me that Ken Shapiro, head of the Assembly Rules Committee, was willing to bring our Chase Road lot bill out of Committee and Assemblyman Burrows would continue to push it, but a very large and ugly floor fight loomed ahead. The A.C.L.U. has really gone all out on this one. Cecile said she had never seen anything like it and it seemed certain to turn into a "religious war" with *heavy* and sensational publicity.

Since 1) the original purpose of the bill was to avoid this kind of confrontation; 2) we could very likely have lost the floor fight, and if we won it, the A.C.L.U. would bring the fight here with a suit; 3) the acceptance by the Scarsdale Foundation was far from certain and would be less so with this kind of publicity, and 4) I'd hate to see Scarsdale be the focus of this kind of inflammatory publicity—I asked Cecile to advise Mr. Shapiro to let our bill die in Committee.

Of course I'm disappointed because I thought we were on our way to a workable compromise, but we gave it our best shot.

This memo is for your information only at this time, but I wanted you to know.

JS:JFS

June 10, 1982

Dr. Howard Goldin, P.C.
646 Park Avenue
New York, New York 10021

Dear Dr. Goldin:

This acknowledges receipt of your letter of June 2 and your frank expression of your views, which I certainly respect. However, I am sure that you appreciate the fact that the Board's responsibility is to try to resolve a troublesome and potentially divisive problem in a manner that will ensure community-wide acceptance. I must respectfully suggest that your views on the Constitution may be neither accurate nor representative of those of the community.

In this connection, I would respectfully call your attention to a decision by the Federal Court of Appeals in Washington, D.C., *O'Hair* v. *Andrus*, 613 F2d 931 (1979) which was brought to my attention recently. I think this case might be particularly relevant to your view that nondiscriminatory use of public land by religious groups somehow violates the Constitution. The case involved a challenge to the Interior Department's granting a permit authorizing the public gathering on the National Mall, the Washington Monument grounds, the Ellipse and the Lincoln Memorial Green for the purpose of an outdoor Mass by Pope John Paul II. Plaintiffs alleged that the issuance of this permit violated the First Amendment. The Court rejected this claim stating:

> "Parkland has an historic identification in the Anglo-American tradition for communication among citizens. In *Hague* v. *CIO, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed.2d 1423 (1939)* the Court declared, in an opinion by Justice Roberts:
>
> 'Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions. Such

use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.'

"This doctrine was quoted and followed in *Kunz* v. New York, 340 U.S. 290, 293, 71 S.Ct. 312, 314, 95 L.Ed. 280 (1951), where the Court, in an opinion by Chief Justice Vinson, held it applicable to the use of these public places 'for the expression of religious views' and the holding of religious meetings."

While neither you nor I are constitutional experts, it seems to me this case, at a minimum, raises a substantial question as to the accuracy of your views as to the Constitution. It indicates, at least, that our problem cannot be solved simply by unthinking citation of the First Amendment.

Sincerely,

Jean Stone
Mayor

JS:jb
cc: Board of Trustees
Lowell J. Tooley
John F. Holden, Jr.

No member of the Board can take any pleasure in being faced again with a decision on the annual application of the Creche Committee. It is a matter the importance of which has been magnified out of all proportion. On the other hand, it involves strongly held religious loyalties and widely misconceived principles of constitutional law, and whichever way we decide, substantial numbers of our citizens will feel betrayed by their elected representatives.

We did not have to be placed in this position. The Creche Committee has been offered two alternative options for placement of its nativity scene on centrally located private property, one on the former Frog Prince property which is no less central than Boniface Circle, and the other on grounds of the Baptist Church which is one of its own constituent congregations. A very substantial number of our citizens, of all religious persuasions feel strongly that religious displays belong on private and not public property. Several of Scarsdale's leading Christian churches withdrew from the Creche Committee in past years because they shared that belief. Nevertheless the Committee has chosen not to accept either alternative offered to it but has again insisted on the creation of a public issue by leaving the decision in the hands of the elected representatives of all the citizens. I am critical of their action because I believe that in forcing that decision the Committee has not acted in the best interests of the community. Scarsdale does not need internal discord or national notoriety. However, so be it. All of us have searched our souls in this manner, and a great deal of legal research has been done by members of the law committee, the results of which have been made available to all the trustees. I do not believe the vote of any of us is likely to be changed by what is said here tonight. However, we — and you — are condemned to listen.

This Board is a legislative body, not a Court of law, and I think that any extended analysis of the legal authorities relating to the Creche issue is out of place here. I propose only to state my conclusions from a consideration of all the material assembled by the Law Committee and made available to us from other sources, including the Civil Liberties Union.

In previous years it was my opinion that granting the permission requested by the Creche Committee for the use of Boniface Circle without any expense or participation by the Village, and with a prominently displayed notice negating any Village involvement or endorsement, does not violate the Establishment Clause. Nothing which has been brought to our attention has led me to change that opinion; on the contrary, it has been fortified. A reading of the opinions in *Donnelly* vs. *Lynch*, the Pawtucket case, which has been prominently in the news and in our minds, reveals that that case described by the head of the RI Chapter of the ACLU as the first case in which a Fed appeals Ct had found a gov't sponsored creche unconstitutional differs fundamentally from the situation involved in Scarsdale. In Pawtucket the Creche was bought, paid for, owned, scheduled and evicted by the City. The Court rightly held this to be an endorsement of the religious beliefs implicit in or evoked by the nativity scene and an involvement in religious [acts?] which run afoul of the Establishment Clause. In Scarsdale the Village is not involved in the arrangements, it incurs no cost and [ ] the posted notice which the Village requires and the Creche C. erects, it is expressly disassociated from any official approval or endorsement, thereby complying with standards laid down about 10 years ago by the US Ct of Appeals for the D of C Circuit in the leading case of *Allen* v. *Morton*. This Board repeatedly indicated at least until last year, that it would afford the same permission to a display by the adherents of any other group, religious or non-religious, and on the same conditions. If we grant permission this year, it must be on that understanding.

In the past the votes of some trustees who opposed granting the committee's application were based at least in part, on the belief that the grant of permission would violate the spirit if not the letter of the First Amendment. I believe this view is founded in misconception. It suggests that the meaning of the Establ Cl is inexact, that its scope is a gray area, in which we are free to exercise our discretion. The courts have said, however, that for better or worse, the making of fine distinctions is the essence of Establ Cl analysis. These distinctions

and this analysis are the basis of the decisions of our courts, and I do not believe that it is open to us, in an area where authoritative precedent exists, to extend the prohibition of the First Amendment to cases which we conceive to violate its spirit. This is tantamount to saying that if we were a court we would hold the granting of the requested permission to be a violation of the Establ Cl. In the first place we are not a court. In the second place the decisions are clearly to the contrary.

The Establ Cl and the Free Exercise Cl were conceived as supplemental and compatible means to the realization of the goal of religious freedom. Despite this intended harmony, tension has often surfaced between the two clauses. The Supr. Ct has held that the Free Ex. Cl. itself compels government to make *some* accommodation to religious realities and needs. So long as government aid goes no further than arguably required by this principle there is no violation of the separation required by the Establ Cl.

In any attempt to reconcile the religion clauses of the First Amendment a principle of accommodation prevails. The legitimacy of non-discriminatory voluntary religious expression in parks has repeatedly been recognized by the Courts. Until its action a year ago which is in essence under review tonight, it has been the openly declared if unwritten policy of this Village that the right of display in Boniface Circle would be made available to all groups. That no other groups have applied to Village does not render the Board's past practice discriminatory.

Although we are obviously not bound by the recommendation of the Hum. Rel. C, I have always felt, and have so stated, that having created that body to guide us on such issues, we must give great weight to their conclusion. I still adhere to that belief, and I certainly agree that a permanent resolution of this issue, either way, is preferable to the annual confrontation with which the Creche Committee has favored us. Unfortunately, I am not sanguine about the likelihood of our being relieved of the issue by judicial mandate. It is by no means certain that a vote to permit the use of Boniface Circle will lead to the suit threatened by the ACLU, based on an alleged

violation of the Establ C1. If such a suit is brought, I believe it will only lead to confirmation that we are not prohibited from permitting such use, which will leave this board with its annual problem as to whether we *should* permit it. On the other hand if we deny permission, we have no assurance that the advocates of the Creche Committee position will bring suit to compel our consent although I have heard the Committee was taking steps to retain counsel. And there is obvious doubt whether such a suit would be successful, although I incline to believe that the Free Exercise forces may have the better of the Constitutional argument. If the suit is not successful, or if no suit is brought, this Board will be left with its annual dilemma. And if suit is brought by either side, the Village faces heavy legal expenses and a prolongation of this controversy for an extended period. As Lynne Clark says in her HRC report, it is a no-win situation.

I am left with my feeling that we should follow the recommendation of the HRC, but this time for different reasons than stated in their report. I feel as the Council did in past years, that approval will cause less bitterness and dissension than denial. Certainly last year's experience bears this out. That there was far more widespread displeasure expressed is only part of the story. More than a little of it was couched in terms which not only showed a total incomprehension of the dilemma facing this Board, but which can only be described as un-Christian. That being the case, my vote may be perceived as pragmatic and cynical. Again, so be it.

Regardless of this Board's vote, it remains in the exclusive control of the Creche Committee to spare Scarsdale the controversy facing us by voluntarily electing to put the creche on private property, and I urge them to do so even if this Board approves their application tonight.

September 12, 1981

The Village Board
Scarsdale, New York.

Attention: Mayor Smith

Gentlemen:

Speaking on Rosh-ha-shanah this past Sunday, at the Stephen Wise Free Synagogue, 30 West 68th Street, New York City, the Rev. Dr. Edward E. Klein said:

"Every man needs an identity that reaches into his ancestry and reaches out through affiliation with his fellows.

"Having enjoyed more than three centuries of freedom in America, we are better Americans for being better Jews. Our rich ethical tradition can only enhance our contributions to America."

This quote of Rabbi Klein very succinctly points up what America really is; a country made up of different peoples from different backgrounds, with different cultures, customs and different religious faiths, welded together into one citizenry — American, which under a religiously devised constitution allows and guarantees these different people to live and flourish collectively and individually.

The American Christmas that most of us know reflects in modified form the customs of many widely and separated lands in Church and home and shop.

Our Christmas cards, our yule logs, our boar's heads, our plum puddings, our Santa Clauses, our stockings hung at the fireplace, the Christmas tree, the Christmas wreath, the Christmas carol and the Christmas creche as well as other traditions reflect foreign cultures. The turkey seems to be our only contribution materially speaking, to Christmas.

We believe our Creche is such an identity as referred to by Rabbi Klein. It is not erected for the purpose of proselytizing, or the forcing of one religion upon another, nor does it seek to be preferred constitutionally over other religious faiths in our Country. It is rather just another manifestation of what Christ-

mas means to us who are Christians in this Country, particularly in our community, and throughout most parts of the world.

We believe, indeed, our Creche to be an identity: Christian in nature, but deep rooted as marrow is to the bone. It is a reflection of what we hold dearer than life itself. History has shown time and time again that while peoples may differ and may dispute on many issues, the scars derived from controversy over religious misunderstandings go the deepest. Americans have enjoyed freedom to pursue religious enjoyment and have erected creches on public and private property for over three centuries unmolested. It is unthinkable that it should come to a conclusion now. How much better it would be to continue on the three centuries of understanding and harmony and mutual respect for each other's way of life.

In asking that permission be granted to erect our Creche here in Scarsdale, we are mindful that while we seek to preserve our rights, we seek to preserve also the rights of all faiths which may or may not at some future time wish to use public property to reflect in some way their religious persuasions. We would welcome all faiths to share with us simultaneously or otherwise this great American heritage.

Respectfully yours,

/s/ Mrs. W. B. Oakes
/s/ Mrs. H. B. Kinsell

The Scarsdale Creche Committee
Scarsdale, New York

November 23, 1976

The Village Board
Scarsdale, New York

Gentlemen:

The Scarsdale Creche Committee is aware of some possible opposition to the placing of the creche once again at Boniface Circle. Because we have not been contacted directly by those who may be oppposed we believe that these feelings are shared by only a few of our citizenry. We do, however, respect the right of all people to express their views and it is for this purpose we wish to make our feelings known.

Since 1957 permission has been granted by the Village to erect a creche which has been a source of edification to the community. Only once has this tradition been questioned and after examination of the issue by the Village Board in 1961, permission was granted. Over the years, the members of the Creche Committee have never received any adverse comments. On the contrary, many of our residents have taken time to express their appreciation.

To us the creche represents our Faith, a Faith not of time or place but which calls us to be witnesses to our beliefs; a Faith deeply rooted in traditions passed down by our ancestors in the hope of our continuing to share this inheritance with our children; a Faith which seeks tolerance and love, compelling us to live in harmony and understanding, and which demands from us a mutual respect for all.

We would consider the removal of the creche from Boniface Circle an erosion of our spiritual values, an affront to the drafters of our Constitution whose intent was to protect religious freedom and an injustice to the people of Scarsdale whose inter-faith activities have grown in stature over the years.

We therefore ask the members of our Village Board to realize that our purpose is not to exclude but to share what we

feel is the best in us, not to promote one religious view over another, but to invite others to express their beliefs, and finally, not to alienate but to strengthen our relationships based on the message of the season, peace and good will.

Respectfully yours,

The Scarsdale Creche
Committee

SCARSDALE CRECHE COMMITTEE

December 20, 1978

Mr. Richard F. Herbek
Assistant Village Manager
Village of Scarsdale
Scarsdale, New York, 10583

Dear Mr. Herbek:

In response to our telephone conversation of Monday, December 18th concerning the sign on the Scarsdale Creche I would like to inform you about the steps taken to comply with your request.

On Tuesday, December 19th in the morning it was necessary to remove the original sign since we had need of some letters which we were unable to purchase in three local stores.

On Wednesday, December 20th at 6:45 A.M. a new sign stating, "This creche has been erected and maintained solely by the Scarsdale Creche Committee, a private organization," was posted on the creche. This sign measures 11" x 14½" as compared to the original sign which was 7" x 11½". It has been placed in the same position as former years, that is, facing the sidewalk on Boniface Circle.

May I draw to your attention that it is not possible for anyone to see this sign in the evening or at night since the street light has been off, to my knowledge, since December 13th in spite of the fact that I personally repoprted this fact three times from December 14th through December 18th.

I hope the above information will be considered satisfactory to the village trustees and if there are any further problems please do not hesitate to call me.

My best wishes to you and your staff for a Happy New Year.

Sincerely yours,

for The Scarsdale Creche Committee

Mrs. John H. Curran
One Rochambeau Road
Scarsdale, New York 10583
472-1673

One Rochambeau Road
Scarsdale, New York 10583
December 7, 1979

Mr. Richard F. Herbek
Assistant Village Manager
Village of Scarsdale
Scarsdale, New York 10583

Dear Mr. Herbek:

On behalf of the Scarsdale Creche Committee, I would like to thank you for your letter granting us permission to erect the Creche on Boniface Circle during the Christmas season. Be assured that the resolution voted upon and passed by the Trustees will be adhered to in every detail.

The suggestion offered to the Scarsdale Creche Committee to place the Creche on church property on a rotating basis had been considered in the past. For a variety of reasons the placement of the Creche on these various sites was not thought feasible. In addition, the members of the committee have unanimously agreed that the Creche was originally intended to express the ecumenical spirit that exists among the churches in Scarsdale. To put an end to this long standing tradition in our community is not the choice of the committee.

We thank you for your interest and concern and extend our best wishes for the New Year to you and the Village Trustees.

Sincerely yours,

_____
for The Scarsdale Creche Committee

Mrs. John J. Curran
(914) 472-1673

cc: Scarsdale Clergy Association

cc: Manager & Bd. 12/13/79

December 1, 1981

My dear Mrs. Stone:

Last election time in Scarsdale I voted for you. Therefore, I feel quite concerned that you did not cast your vote with the three members of the Village trustees who favored the Creche.

Last year the vote was 4-3 to allow the Creche to remain in Boniface Circle.

I cannot understand how anyone could possibly object to our honoring the Son of God on His birthday—even on public property.

The Court threw out the 1976 suit. Judge Robert G. Ward must have studied the case well before he made his decision.

Please don't claim, as you did, that most of the calls you received supported your decision. Impossible!!

Truly yours,
(Mrs.) Ann Cawley

ANNUAL
VILLAGE OF SCARSDALE
CHRISTMAS CAROL SING
Sponsored by the Town Club
1982

THANK YOU to the . . .

Scarsdale Chamber of Commerce
Scarsdale National Bank
Scarsdale Inquirer
Bank of New York
Union Savings Bank
Scarsdale High School Band
Boy Scout Troop 410
Girl Scout Troup
Village Recreation Department
Rotary Club of Scarsdale
Manhanttan Savings Bank
Westchester Federal Savings & Loan

. . .from Town Club. . .
for joining us in support of
the 1982 Christmas Carol Sing.

THE FIRST NOEL

THE FIRST NOEL, THE ANGELS DID SAY,
WAS TO CERTAIN POOR SHEPHERDS IN
FIELDS AS THEY LAY,
IN FIELDS WHERE THEY LAY KEEPING
THEIR SHEEP,
ON A COLD WINTER'S NIGHT THAT WAS
SO DEEP

NOEL, NOEL, NOEL, NOEL, BORN IS THE
KING OF ISRAEL.

THEY LOOKED UP AND SAW A STAR,
SHINING IN THE EAST BEYOND THEM FAR,
AND TO THE EARTH IT GAVE GREAT LIGHT
AND SO IT CONTINUED BOTH DAY AND NIGHT

NOEL, NOEL, NOEL, NOEL, BORN IS THE
KING OF ISRAEL.

IT CAME UPON THE MIDNIGHT CLEAR

IT CAME UPON THE MIDNIGHT CLEAR, THAT GLORIOUS SONG OF OLD,
FROM ANGELS BENDING NEAR THE EARTH, TO TOUCH THEIR HARPS OF GOLD,
PEACE ON THE EARTH, GOOD WILL TO MEN, FROM HEAVEN'S ALL GRACIOUS KING,
THE WORLD IN SOLEMN STILLNESS LAY, TO HEAR THE ANGELS SING.

STILL THROUGH THE CLOVEN SKIES THEY COME,
WITH PEACEFUL WINGS UNFURLED;
AND STILL THEIR HEAVELNY MUSIC FLOATS,
O'ER ALL THE WEARY WORLD;
ABOVE ITS SAD AND LOWLY PLAINS
THEY BEND ON HOVERING WING,
AND EVER O'ER ITS BABEL SOUNDS

HARK THE HERALD ANGELS SING, GLORY TO THE NEW BORN KING,
PEACE ON EARTH, AND MERCY MILD, GOD AND SINNERS RECONCILED.
JOYFUL ALL YE NATIONS RISE, JOIN THE TRIUMPH OF THE SKIES,
WITH THE ANGELIC HOSTS PROCLAIM, CHRIST IS BORN IN BETHLEHEM.

HARK! THE HERALD ANGELS SING, GLORY TO THE NEW BORN KING.

HAIL THE HEAVEN BORN PRINCE OF PEACE! HAIL THE SUN OF RIGHTEOUSNESS!
LIGHT AND LIFE TO ALL HE BRINGS, RISEN WITH HEALING IN HIS WINGS.
MILD HE LAYS HIS GLORY BY, BORN THAT MAN NO MORE MAY DIE,
BORN TO RAISE THE SONS OF EARTH, BORN TO GIVE THEM SECOND BIRTH.

HARK! THE HERALD ANGELS SING, GLORY TO THE NEW BORN KING.

O COME, ALL YE FAITHFUL

O COME ALL YE FAITHFUL,
JOYFUL AND TRIUMPHANT
O COME YE, O COME YE TO BETHLEHEM!
COME AND BEHOLD HIM, BORN THE KING OF ANGELS!
O COME LET US ADORE HIM, O COME LET US ADORE HIM,
O COME LET US ADORE HIM,
CHRIST, THE LORD!

SING, CHOIRS OF ANGELS,
SING IN EXALTATION,
O SING ALL YE CITIZENS OF HEAV'N ABOVE,
GLORY TO GOD, GLORY IN THE HIGHEST!
O COME LET US ADORE HIM, O COME LET US ADORE HIM,
O COME LET US ADORE HIM,
CHRIST, THE LORD!

ROCK OF AGES

Mighty, praise beyond compare,
Rock of my salvation,
Build again my house of prayer
For thy habitation!
Haste my restoration: let a ransomed nation
Joyful sing
To its king
Psalms of dedication!

Woe was mine in Egypt-land
Tyrant King's enslaved me,
Till thy mighty, outstretched hand
From oppression saved me.

Pharaoh, rash pursuing, vowed my swift undoing'
Soon, his host
That proud boast
'Neath the waves was rueing!

To thy holy hill, the way
Had'st Thou clear before me:
With false gods I went astray—
Foes to exile bore me.
Torn from all I cherished, almost had I perished;
Babylon fell,
Zerubabel
Had'st Thou to restore me!

Then the vengeful Haman wrought
Subtly to betray me;
In his snare himself he caught—
He that planned to slay me.
Haled form Esther's palace,
Hanged on his gallows!
Seal and king
Persl's king
Gave Thy servant zealous.

SILENT NIGHT

SILENT NIGHT, HOLYNIGHT,
ALL IS CALM, ALL IS BRIGHT.
ROUND YON VIRGIN, MOTHER AND CHILD,
HOLY INFANT, SO TENDER AND MILD.
SLEEP IN HEAVENLY PEACE.
SLEEP IN HEAVENLY PEACE.

SILENT NIGHT, HOLY NIGHT,
SHEPHERDS QUAKE AT THE SIGHT.
GLORIES STREAM FROM HEAVEN AFAR,
HEAVENLY HOSTS SING ALLELUIA.
CHRIST, THE SAVIOR IS BORN!
CHRIST, THE SAVIOR IS BORN!

O LITTLE TOWN OF BETHLEHEM

O LITTLE TOWN OF BETHLEHEM,
HOW STILL WE SEE THEE LIE.
ABOVE THY DEEP AND DREAMLESS SLEEP
THE SILENT STARS GO BY.
YET IN THY DARK STREETS SHINETH,
THE EVERLASTING LIGHT.
THE HOPES AND FEARS OF ALL THE YEARS
ARE MET IN THEE TONIGHT.

O HOLY CHILD OF BETHLEHEM,
DESCEND ON US WE PRAY.
CAST OUT OUR SIN AND ENTER IN,
BE BORN IN US TODAY.
WE HEAR THE CHRISTMAS ANGELS
THE GREAT GLAD TIDINGS TELL,
O COME TO US, ABIDE WITH US

JOY TO THE WORLD

JOY TO THE WORLD! THE LORD IS COME.
LET EARTH RECEIVE HER KING!
LET EVERY HEART, PREPARE HIM ROOM,
AND HEAVEN AND NATURE SING,
AND HEAVEN AND NATURE SING,
AND HEAVEN, AND HEAVEN AND NATURE SING.

JOY TO THE WORLD! THE SAVIOR REIGNS.
LET MEN THEIR SONGS EMPLOY.
WHILE FIELDS AND FLOODS,
ROCKS, HILLS AND PLAINS,
REPEAT THE SOUNDING JOY,
REPEAT THE SOUNDING JOY,
REPEAT, REPEAT THE SOUNDING JOY.

HE RULES THE WORLD, WITH TRUTH AND GRACE,
AND MAKES THE NATIONS PROVE,
THE GLO-RIES OF, HIS RIGHT-EOUSNESS,

AND WONDERS OF HIS LOVE,
AND WONDERS OF HIS LOVE,
AND WONDERS, AND WONDERS OF HIS LOVE.

WE THREE KINGS

WE THREE KINGS OF ORIENT ARE,
BEARING GIFTS, WE TRAVERSE AFAR.
FIELD AND FOUNTAIN, MOOR AND MOUNTAIN
FOLLOWING YONDER STAR.
O -- STAR OF WONDER, STAR OF NIGHT,
STAR WITH ROYAL BEAUTY BRIGHT.
WESTWARD LEADING, STILL PROCEEDING,
GUIDE US TO THY PERFECT LIGHT.

BORN A KING OF BETHLEHEM'S PLAIN,
GOLD I BRING TO CROWN HIM AGAIN.
KING FOREVER, CEASING NEVER,
OVER US ALL TO REIGN.
O -- STAR OF WONDER, STAR OF NIGHT,
STAR WITH ROYAL BEAUTY BRIGHT.
WESTWARD LEADING, STILL PROCEEDING,
GUIDE US TO THY PERFECT LIGHT.

GOD REST YE MERRY GENTLEMEN

GOD REST YE MERRY GENTLEMEN, LET NOTHING
YOU DISMAY.
REMEMBER CHRIST OUR SAVIOR WAS BORN ON
CHRISTMAS DAY.
TO SAVE POOR SOULS FROM SATAN'S POW'R
WHICH LONG HAD GONE ASTRAY.
OH TIDINGS OF COM-FORT AND JOY, COMFORT AND
JOY,
OH TIDINGS OF COM-FORT AND JOY.

FROM GOD OUR HEAVN'LY FA-THER, A BLESSED
ANGEL CAME:
AND UNTO CERTAIN SHEP-HERDS BROUGHT

TIDINGS OF THE SAME:
HOW THAT IN BETHLEHEM WAS BORN THE SON
OF GOD BY NAME.
OH TIDINGS OF COM-FORT AND JOY, COMFORT AND
JOY,
OH TIDINGS OF COMFORT AND JOY.

JINGLE BELLS

DASHING THRO' THE SNOW, IN A ONE HORSE
OPEN SLEIGH,
O'ER THE FIELDS WE GO, LAUGHING ALL
THE WAY.
BELLS ON BOBTAIL RING, MAKING SPIRITS
BRIGHT,
WHAT FUN IT IS TO RIDE AND SING A SLEIGH-
ING SONG TONIGHT! OH . . .
JINGLE BELLS! JINGLE BELLS! JINGLE ALL
THE WAY!
OH, WHAT FUN IT IS TO RIDE IN A ONE HORSE
OPEN SLEIGH!
JINGLE BELLS! JINGLE BELLS! JINGLE
ALL THE WAY!
OH, WHAT FUN IT IS TO RIDE IN A ONE
HORSE OPEN SLEIGH!

A DAY OR TWO AGO,
I THOUGHT I'D TAKE A RIDE,
AND SOON MISS FANNIE BRIGHT WAS
SEATED AT MY SIDE.
THE HORSE WAS LEAN AND LANK, MISFORTUNE
SEEM'D HIS LOT,
WE GOT INTO A DRIFTED BANK, AND WE
GOT UPSOT, OH . . .
JINGLE BELLS! JINGLE BELLS! JINGLE ALL
THE WAY!
OH, WHAT FUN IT IS TO RIDE IN A ONE HORSE
OPEN SLEIGH!
JINGLE BELLS! JINGLE BELLS! JINGLE

ALL THE WAY!
OH, WHAT FUN IT IS TO RIDE IN A ONE
HORSE OPEN SLEIGH!

HANUKAH

Hanukah, Hanukah, festival of lights;
Candles glow in a row, seven day, eight nights.
Hanukah, Hanukah, make your dreydls spin.
Round and round, round and round, everyone join in!

Hanukah, Hanukah, happy holiday,
Kindle light ev'ry night, Shamas leads the way.
Hanukah, Hanukah, games for ev'ry one,
Let's begin, who will win? Come and join the fun!

Hanukah, Hanukah, what a merry time;
Cakes to eat, what a treat, see the faces shine!
Hanukah, Hanukah, sing and dance this way!
Round and round, round and round, Happy holiday!

DECK THE HALLS

DECK THE HALLS WITH BOUGHS OF HOLLY,
FA LA LA LA LA LA LA LA LA.
'TIS THE SEASON TO BE JOLLY,
FA LA LA LA LA LA LA LA LA.
DON WE NOW OUR GAY APPAREL,
FA LA LA LA LA LA LA LA LA,
TROLL THE ANCIENT YULETIDE CAROL,
FA LA LA LA LA LA LA LA LA.

SEE THE BLAZING YULE BEFORE US,
FA LA LA LA LA LA LA LA LA,
STRIKE THE HARP AND JOIN THE CHORUS,
FA LA LA LA LA LA LA LA LA,
FOLLOW ME IN MERRY MEASURE,
FA LA LA LA LA LA LA LA LA,
WHILE I TELL OF YULETIDE TREASURE

FA LA LA LA LA LA LA LA LA.

FAST AWAY THE OLD YEAR PASSES,
FA LA LA LA LA LA LA LA LA,
HAIL THE NEW, YE LADS AND LASSES,
FA LA LA LA LA LA LA LA LA,
SING WE JOYOUS SONGS TOGETHER
FA LA LA LA LA LA LA LA LA,
HEEDLESS OF THE WIND AND WEATHER,
FA LA LA LA LA LA LA LA LA,

JOLLY OLD ST. NICHOLAS

JOLLY OLD ST. NICHOLAS,
LEAN YOUR EAR THIS WAY!
DON'T YOU TELL A SINGLE SOUL,
WHAT I'M GOING TO SAY,
CHRISTMAS EVE IS COMING SOON,
NOW MY DEAR OLD MAN,
WHISPER WHAT YOU'LL BRING TO ME,
TELL ME IF YOU CAN.

WHEN THE CLOCK IS STRIKING TWELVE
WHEN I'M FAST ASLEEP,
DOWN THE CHIMNEY BROAD AND BLACK
WITH YOUR PACK YOU'LL CREEP.
ALL THE STOCKINGS YOU WILL FIND,
HANGING IN A ROW;
MINE WILL BE THE SHORTEST ONE,
YOU'LL BE SURE TO KNOW.

O CHRISTMAS TREE

O CHRISTMAS TREE,
O CHRISTMAS TREE,
HOW LOVELY ARE YOUR BRANCHES,
O CHRISTMAS TREE,
O CHRISTMAS TREE,
HOW LOVELY ARE YOUR BRANCHES.

YOUR GREEN IN SUMMER-TIME YOU SHOW
AND ALSO IN THE WINTER SNOW.
O CHRISTMAS TREE,
O CHRISTMAS TREE,
HOW LOVELY ARE YOUR BRANCHES.

ANGELS WE HAVE HEARD ON HIGH

ANGELS WE HAVE HEARD ON HIGH,
SINGING SWEETLY O'ER THE PLAINS.
AND THE MOUNTAINS IN REPLY,
ECHOING THEIR JOYOUS STRAIN.

GLO-------RIA!
IN EXCELSIS DEO.
GLO-------RIA!
IN EXCELSIS DEO.

SHEPHERDS WHY THIS JUBILEE,
WHY YOUR JOYOUS STRAIN PROLONG?
WHAT THE GLADSOME TIDINGS BE,
WHICH INSPIRE YOUR HEAVENLY SONG?

GLO-------RIA!
IN EXCELSIS DEO.
GLO-------RIA!
IN EXCELSIS DEO.

COME TO BETHLEHEM AND SEE,
HIM WHOSE BIRTH THE ANGELS SING.
COME ADORE ON BENDED KNEE,
CHRIST THE LORD OUR NEWBORN KING.

GLO-------RIA!
IN EXCELSIS DEO.
GLO-------RIA!
IN EXCELSIS DEO.

RUDOLPH THE RED-NOSED REINDEER

RUDOLPH, THE RED-NOSED REINDEER,
HAD A VERY SHINY NOSE,
AND IF YOU EVER SAW IT,
YOU WOULD EVEN SAY IT GLOWS.

ALL OF THE OTHER REINDEER,
USED TO LAUGH AND CALL HIM NAMES,
THEY NEVER LET POOR RUDOLPH
JOIN IN ANY REINDEER GAMES.

THEN ONE STORMY CHRISTMAS EVE,
SANTA CAME TO SAY:
"RUDOLPH WITH YOUR NOSE SO BRIGHT
WON'T YOU GUIDE MY SLEIGH TONIGHT?"

THEN ALL THE REINDEER LOVED HIM
AND THEY SHOUTED OUT WITH GLEE:
"RUDOLPH THE RED-NOSED REINDEER,
YOU'LL GO DOWN IN HISTORY!"

FROSTY THE SNOWMAN

Frosty the snowman, was a jolly, happy soul,
With a corncob pipe, and a buttonnose,
and his eyes made out of coal.

Frosty the snowman, made the children laugh and play,
And were they surprised when before their eyes
He came to life one day.

There must have been some magic in that old silk hat they found,
For when they placed it on his head
He began to dance around, Oh-

Frosty the snowman was alive as he could be,
And the children say he could laugh and play

Just the same as you and me.

Frosty the snowman, the sun was hot that day,
So he said, "Let's run, and we'll have fun,
before I melt away."

Down to the village, with a broomstick in his hand,
Running here and there, all around the square, saying,
"Catch me if you can."

He led them down the streets of town right through a traffic cop,
And he only paused a moment when, he heard him holler "Stop!"

For Frosty the Snowman had to hurry on his way,
But he waved good-by saying, "Don't you cry, I'll be back again some day."

Thumpity-thump-thump, thumpity-thump-thump, look at Frosty go,
Thumpity-thump-thump,thumpity-thump-thump, ov-er hills of snow!

SANTA CLAUS IS COMIN' TO TOWN

YOU BETTER WATCH OUT, YOU BETTER NOT CRY,
BETTER NOT POUT, I'M TELLING YOU WHY
SANTA CLAUS IS COMIN' TO TOWN.

HE'S MAKING A LIST, AND CHECKING IT TWICE.
GONNA FIND OUT WHOSE NAUGHTY AND NICE,
SANTA CLAUS IS COMIN' TO TOWN.

HE SEES YOU WHEN YOU'RE SLEEPING,
HE KNOWS WHEN YOU'RE AWAKE,
HE KNOWS WHEN YOU'VE BEEN BAD OR GOOD,
SO BE GOOD FOR GOODNESS SAKE, OH!

YOU BETTER WATCH OUT, YOU BETTER NOT CRY.
BETTER NOT POUT, I'M TELLING YOU WHY.
SANTA CLAUS IS COMIN' TO TOWN!

November 20, 1982

Mayor Jean Stone
Village of Scarsdale
Scarsdale, New York

Dear Mrs. Stone:

I am a former resident of Scarsdale and I have returned many times over the years to visit friends, always retaining and reinforcing a sense of satisfaction for having once belonged in such a vital community. It is with a deep feeling of regret, therefore, that I must address a problem which has arisen in your village (and mine by extension) recently, and which is now threatening to disrupt the harmony and the quiet coexistence of citizens of varying religious persuasions.

At a recent dinner party in Scarsdale, conversation turned to a problem which has been permitted to acheive the status of a major issue—the placement of a creche at Boniface Circle during the Christmas season. The creche was a tradition during my growing up years in Scarsdale. It was not a cause of disharmony then because perhaps there was a greater sense of tolerance among all religious denominations. I numbered my friends among many faiths and joined in their celebrations as easily as they did in mine. As a matter of fact, we all learned from each other, without a formal ecumenism. The same sense of tolerance and freedom of expression cannot be allowed to vanish in the Scarsdale of today.

I bring up two point which I feel must be addressed by the Village Board when they convene to vote a decision on the traditional placement of the Creche:

I. If the issue is the use of public property for religious purposes, the decision to limit or deny that use must be applied universally. There is, at present, a Jewish congregation — Mivakshe Derekh — which has been using Wayside Cottage on a regular, weekly basis for its Sabbath services, and, on a more extensive basis, for its High Holy Day services in the fall. (This fact is published in the Inquirer in its religion section.) During the time when the facility is in use by this

group, *public access to the premises is restricted*. The full use of the property is denied to the public. Wayside Cottage is public property, owned by the village, but administered by the Junior League, a private organization which has been granted discretion as to the use of Wayside Cottage. Boniface Circle is public property as well and the Creche Committee is also a private organization. Public use of Boniface Circle is in *no way* restricted by the placement of the Creche. To deny the placement of the Creche by this private group would be to treat this private committee inequitably. This cannot be permitted and is subject to legal challenge.

II. If the issue is the separation of Church and State, as purported by Mr. Leonard Rubin, who created the issue in the first place, it would be wise for the Trustees of the Village to read carefully the section of our Federal Constitution prohibiting the establishment of a State religion. The Village has, in the past year, negotiated a contract with the employees of The Scarsdale Public Library which allows the closing of the library on Yom Kippur, a non-federal holiday. The library is a public facility and use of that facility is denied to taxpayers on that day. There is no other religious holy day for which that permission is granted. Christmas Day is a Federal holiday and that is the only day on which the library is closed for what can be construed as religious observance. The employees of the library were allowed to exchange library closing on Election Day, a federal and State observance. This cannot be permitted to continue if indeed there is to be a strict interpretation of Article I of our Constitution.

I sincerely regret that these points must be made public. It is the rancor which is threatening to erupt in your Village which has caused me to do so. I picked up a copy of this week's Inquirer with the purpose of trying to determine the position in the Village, removed from the sentiments of those who had initiated the discussion with me at dinner last week. It would appear that there is a wish on the part of concerned citizens to remove the status of "ISSUE" from the Creche. In its editorial, however, the Inquirer would prefer that the Creche Committee refrain from making its request and there-

fore make the problem disappear. This cannot be done in the spirit or the exercise of the first Amendment, without examining the other conflicts which exist in the Village, as stated above.

Had your administration addressed the issue firmly in the past, and resisted the exhortations of vocal malcontents, the free and tolerant practice of religious sentiment would not be an issue today. In the spirit of tolerance and fairness, the principle which is at stake must be judged without preference to one religious group over another. The effects of your decision will be far-reaching and not everyone will be pleased if the decision encompasses all the conflicts apparent. There is room for coexistence and an "ISSUE" would not have arisen had more tolerance prevailed several years ago among peoples who purport to bring civil rights to light.

Sincerely yours,

Dorothy S. Patterson

Copies to:
The Scarsdale Inquirer
The Creche Committee
The Trustees of The Village of Scarsdale
The Citizens' Advisory Council

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

[McCreary Deposition excerpt]

go to any board meetings on that subject?

A No. I don't believe I did. Again, it seemed to be adequately handled.

Q The very next page of McCreary Exhibit B numbered 351 at the top, the next sentence on that page, "She replied that it was jointly owned by the group of residents asking permission to place it at Boniface Circle," was that a true statement?

A Well, it was actually owned by me, but we were—I was deeding title by oral deed to everyone who participated with me.

Q This was a creche that had been owned by you previous to December 7, 1982?

A That's correct.

Q How long had you owned this creche?

A Oh, for five years, something like that.

Q Did your purchase it?

A No. It was a gift from my husband's sister.

A During those four or five years, had you ever displayed the creche?

A Yes, I had.

Q On every year, every Christmas?

A Yes.

Q Did you display it in 1982?

A Yes.

Q And in 1981?

A Yes.

Q Where would you display it?

A It was inside my house in those times.

Q During the entire five-year period you had it?

A Yes.

Q Whereabouts inside your home?

A Oh, in the living room.
A In every one of those years?
A Let me think.
MR. MURPHY: If you remember.
A I'm not sure.
Q The majority of those five years?
A I think the majority. It might have been out in the hall one year.
Q Excuse me?
A I said it might have been in the hall one year. I don't recollect.
Q Was it ever displayed one year in the basement of your home?
A No.
Q How large is the creche?
A Twelve inches, the standing figures.

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A I didn't actually draft that, but the idea—
Q Was yours?
A —I believe was mine.
Q Referring to the fourth paragraph from the bottom, "The nativity scene should not be a divisive issue but the Board has unfortunately made it so," did you agree with that statement?
A Yes.
Q Do you still consider the issue to be a divisive issue?
MR. MURPHY: What do you mean by divisive issue?
MR. LANDMAN: However it's meant in the December 18, 1982 open letter advertisement.

A I think it remains a troublesome issue, a vexing issue of constitutional construction that should be solved.
Q Is it also a divisive issue, still?
MR. MURPHY: As used in this document?
MR. LANDMAN: As used.

A To the extent that people disagree as to whether there is or is not a constitutional right, then it remains an issue.

Q Would you agree that it is still a divisive issue, as used in this document?
MR. MURPHY: She just answered that question.
MR. LANDMAN: No, she did not.
MR. MURPHY: She didn't? Would you read back the question before, the question just before this question?
MR. LANDMAN: And the answer.
(A portion of the record was read by the reporter.)
MR. LANDMAN: I asked whether it is still a divisive issue, and if you listened to what the reporter just read, the answer was, it is still an issue.
My question is whether it is a divisive issue, still.
MR. MURPHY: For purposes of the record, I think she has answered that question.
Mr. LANDMAN: Fine.

Q Mrs. McCreary, is it still a divisive issue in the context of divisive as used in McCreary Deposition Exhibit C?
A I believe that I said that my definition of, my understanding of divisive in this letter was that it was a troublesome issue because it related to a constitutional question of considerable significance—with respect to which some people disagree. That's my definition of divisive, and in that respect, obviously, it is still a divisive issue or I wouldn't be in this room.

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Q Did he ever say to you he wished the whole affair would just go away?
A No. I think he was apprehensive about litigation.
Q How about Ms. Lenz?
A She, too, felt that she was not in a position to become involved in litigation. There was another individual I remember, Collette Hoey, who stated that she simply did not want to sue the Village.
Q H-o-e-y?
A H-o-e-y.
Q Did any of these individuals say they did not agree with the position that was being put forth in this lawsuit?

A No.

Q Are there any other individuals you can now recall that you spoke with that said that or refused to be Plaintiffs?

A No.

Q What message does the creche symbolize to you?

A To me it has a variety of meanings. It is a celebration of a specific historical event, of the birth of an individual in whose divinity I believe. It is also to me an expression of moral and philosophical and spiritual values that would relate to a kind of secular humanism. I might say I think both are of equal significance.

Q Would you consider the Fourth of July to be a similar celebration of an historical event?

MR. MURPHY: Just note my objection to the form of the question. You may answer it.

Q You may answer it.

A Yes, I think the Fourth of July is.

Q How about Abraham Lincoln's birthday?

A Yes.

Q Do you believe the Village of Scarsdale should have any role in celebrating the birth of Christ?

MR. MURPHY: Note my objection to that question.

A The Village of Scarsdale, No. Repeat the question.

Q Sure.

MR. LANDMAN: Would you read it back?

(The pending question was read by the reporter.)

MR. MURPHY: Should the Village of Scarsdale have a role in celebrating the birth of Christ, I believe is the question.

A No.

Q Why is that?

A Because I believe the proper role of the Village is to—well, the proper role of the Village is to facilitate the private celebration thereof to the extent it has religious significance. To the extent Christmas has assumed a secular meaning, then I do believe that its erection of trees and lights and carols is appropriate.

Q For secular reasons?

A Yes.

Q Do you believe that the Village's role in erecting Christmas trees and lights and caroling is a secular role?

MR. MURPHY: Note my objection.

A Primarily, I believe so.

Q Mrs. McCreary, I believe you read the Complaint before it was filed in this action?

A Yes.

Q Is that correct?

A Yes.

Q Did you agree with everything in the Complaint?

A Most things, I believe, yes.

Q I would like to show you a copy of the Complaint in this action and just ask you if there is anything—and you can take as long as you want—if there is anything that comes to mind—if you want to look at any portion of it—with which you disagree.

MR. MURPHY: Can you be a little more specific?

MR. LANDMAN: Well, I can be very specific. I think that Mrs. McCreary's answer was that most of the things

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celebration and message of the christmas holiday,'' what does that mean to you?

A Well, it means several things. The celebration of Christmas for Christians is a religious event, and the application to erect the creche, as I said in my application, is for the purpose of celebrating our personal religious convictions and having access to parklands open to all others for that purpose. I mean for general purposes.

With respect to the celebration, as I've indicated, to me there is also a humanistic, secular aspect that conveys an important message of peace and good will (you can perceive the message is in the eye of the beholder) but I think that's an additional message that was intended to be conveyed, an ecumenical message.

Q By the erection of the creche?

A Yes.

Q Is the purpose of the creche, then, for a religious or a secular purpose?

MR. MURPHY: In her opinion.

A In my opinion, it's both.

Q Which is the dominant purpose?

A To me, neither one dominates.

Q They are equal?

A They are both equal.

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A Do I think it's appropriate for the government to erect a Christmas tree? Yes, because I believe holidays are—it is appropriate for the government to commemorate holidays both—whether they are religious in origin or not and whether they remain so or not.

Q Do you think the government should commemorate every religious holiday?

MR. MURPHY: Same objection.

A I think you are misquoting me. I said I thought it was appropriate for the government to commemorate holidays even though they may have a religious origin and may in some peoples' minds remain religious. I believe I should add, that to the extent that the holiday has a variety of meanings to a variety of people and there is a general universal symbol of the holiday as such, that it is not constitutionally impermissible for the government to celebrate that holiday by various symbols and signs.

Q Are there any other religious holidays which you feel the government should celebrate?

A Well, the Scarsdale schools are closed on Rosh Hashanah and Yom Kippur. I feel that's appropriate. The Scarsdale Children's Library of the Scarsdale Public Library has erected a menorah at Hanukkah. Similarly, the Scarsdale public school, in the library, has erected five menorahs during Hanukkah. I find that all appropriate. It does not offend me. Yes, I believe that's acceptable.

Q Why do you draw a distinction for the creche?

MR. MURPHY: Who said she did?

A To me these have no religious significance, they are commemorating—these are a symbol which have to do—let's see, which have to me a secular meaning, but to other people a religious meaning. I don't subscribe to the religious meaning thereof, but to me they have, again, spiritual, ethical, humanistic, moral values. I have no objection to their erection. No one is forcing me to believe in anything.

Q Now that you've had an opportunity to think about these other symbols, have you formulated an opinion as to whether or not you think it is appropriate for the erection of a creche at Boniface Circle?

MR. MURPHY: Excuse me. You are going to have to be a little more specific. That's exactly what she proposed to do in December.

Q For the Village to erect a creche at Boniface Circle?

MR. MURPHY: At government expense?

MR. LANDMAN: Yes.

A At government expense? I still don't know.

Q I would like to refer you to paragraph 18 which is found on page 9 of the Complaint.

MR. MURPHY: Paragraph 18?

MR. LANDMAN: Yes.

Q In the context of the last sentence of that paragraph, what is your understanding of the phrase, "The Plaintiffs also represent in this application that among the purposes of the display of the creche are their desires to join in the Village's celebration of Christmas by giving recognition to the birth of Jesus Christ, the occasion and namesake of the holiday, and to celebrate and express religious convictions"?

Q What is meant by celebrating or joining in the Village's celebration?

A I'm sorry. I thought I expressed that. In other words, I think the Village takes recognition, as I said, of the federal, national holiday of Christmas. I think it takes recognition of the fact that there is a holiday which is widely celebrated by people of all faiths and all persuasions, atheists included, that pursuant thereto, they erect various multi-colored lights, whatever. They mean one thing to me, they mean another thing to

someone else, and my part in all of this hoopla is to express my own religious convictions because that is the part of Christmas that's important to me. I hope—

MR. MURPHY: That's a very good answer.

Q Is there a feeling on your part that one of the purposes of having the creche at Boniface Circle is to prevent Christmas in the Village of Scarsdale from becoming too secularized?

A No.

Q That is not—

Mr. MURPHY: She said no.

A No.

Q Do you consider that Scarsdale's, the Village of Scarsdale's celebration of Christmas is too secularized?

A No.

Q Would your describe to me what is located in Boniface Circle?

A Two park benches, a flagpole, a tree, a walkway through, a walkway around, hedges, grass, and then kind of down in a declevity of sorts, I think it's the north end, there is a small stone half circle or quarter circle which has various plaques on it, and I think—Boniface Circle existed, of course, from the beginning of the Village's history, and I believe it was after World War II that this—

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because you have to walk downstairs. You don't see them, the plaques, very readily, easily.

Q Did you belong to any group that erected a creche in any year anywhere in Scarsdale previous to this?

A No.

Q Do you believe the creche should be at Boniface Circle rather than other publicly owned land?

MR. MURPHY: Just note my objection to the question.

A I think it's a good spot for the creche.

Q Are there other good spots for the creche?

MR. MURPHY: Where?

Q In the Village of Scarsdale on publicly owned land.

A I think Boniface Circle is probably the best spot.

Q Why?

A Because it is very central.

Q Any other reasons?

A Well, because the lights are primarily concentrated in that immediate downtown area, which is not large, and there is the Christmas tree that is decorated and the lights, and it just belongs—if you're goinig to put up—it belongs as part of that display. The other parks do not have the lights and the wreaths and all that stuff.

Q Do you know where Chase Park is?

A Yes.

Q Across the street from Boniface Circle?

A Across the street, yes.

Q Did you ever consider that as a place to put the creche?

A I did not.

Q Why not?

A It has a great—it has a lot of trees and it kind of floats upward and it's—to my knowledge, there are no Christmas decorations in that park at all. It's dark and secluded.

Q Has anyone ever said to you that they believe the creche should be at Boniface Circle because there are the names of the veterans in Boniface Circle?

A No.

Q Have you every thought that?

A No, I've never connected that.

Q Have you ever heard the two of those connected?

A No.

Q Did you consider any other publicly owned land for location of the creche prior to filing the December 7, 1982 application?

A No.

Q Did anyone raise that with you?

A No.

Q And the reasons are for the reasons you have previously stated?

A Right, that there's no other publicly owned lands that are decorated.

Q Do they decorate the Village Hall?

A There's a tree inside and I think on the roof, but that's all the decoration that is there, I believe.

Q Would that be an appropriate place for the erection of a creche?

A You could—possible. It is isolated, comparatively.

Q Mrs. McCreary, do you believe that the creche should either be at Boniface Circle and nowhere else?

MR. MURPHY: Objection to that question. When you say "nowhere else," do you mean public, private, homes?

Q Anywhere.

A Anywhere?

Q Yes, in the Village of Scarsdale.

A Do I believe the creche should be at Boniface Circle and nowhere else or rather than anywhere else?

Q Or nowhere else.

MR. MURPHY: Either/or. Just note my objection to the question.

A I'm still confused. Are you asking me do I think that—

MR. MURPHY: Let him rephrase the question.

Q Mrs. McCreary, is it your belief that the creche should either be at Boniface Circle or not erected in the Village of Scarsdale, the creche which you own?

MR. MURPHY: Obviously not. She testified she erected it in her own home.

A No.

Q Do you believe it should be on Boniface Circle or not be placed outside?

MR. MURPHY: Note my objection.

A No.

Q You do not believe that?

MR. MURPHY: She does not. Her answer was no.

Q Do you believe that it should either be at Boniface Circle or no other publicly owned land?

A No.

Q You think if it cannot be at Boniface Circle, then it might be appropriate to put it in a different location in the Village of Scarsdale on publicly owned land?

MR. MURPHY: I'm asking counsel if when he uses the word "appropriate," does he mean legally permissible.

MR. LANDMAN: Legally or morally.

MR. MURPHY: I don't understand what morally means, and I object to the form of the question.

MR. LANDMAN: I'm asking Mrs. McCreary's view of morally appropriate.

A To place it on any other public land other than—

Q Boniface Circle.

A Yes, I think it could go elsewhere, but I think Boniface Circle is the best location.

MR. MURPHY: You don't or you do?

THE WITNESS: I do think Boniface Circle is the best location.

Q But if it could not be at Boniface Circle, you would not object to having it at a different location of publicly owned land?

MR. MURPHY: Objection.

A I didn't say that.

Q I'm asking that now.

A I would not object? That I don't know. I would have to wait and see.

Q Wait until you see how this lawsuit comes out? Did you ever consider, other than within your own home, placing the creche on private property once the Board of Trustees rejected your application for Boniface Circle?

A No, I did not.

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Q Would you tell me, in addition to the Christmas tree, Christmas decorations, Christmas lights, how else the Village of Scarsdale celebrates Christmas, from your own knowledge?

A Oh, the Christmas tree and Christmas lights both at City Hall and in the Village? Well, it issues permits to the Town Club to have a Christmas carol sing. It erects lights at Arthur Manor. It lets its fire trucks be used for Santa Claus to go to the various neighborhood associations, Christmas carol sings, closes the public schools.

Q Do you consider each one of those things to have both a religious and a secular purpose?

A Probably the Santa Claus is wholly secular, I suspect, although not necessarily. Again, it depends.

Q In your opinion.

A In my opinion, all of these activities are inextricably involved in the celebration of the whole season which has two but co-equal significances for me.

Q Does your religion require you to erect a creche—

A No.

Q —on publicly owned land?

A No.

Q What is your understanding of the purpose of the plaque or sign that would be placed on the creche that you plan to erect?

A The purpose is to make clear that the Village of Scarsdale does not explicitly or implicitly endorse the communicative concept of this display; it is neutral with respect to the issue.

Q Do you think that's necessary?

MR. MURPHY: Legally?

MR. LANDMAN: In her own opinion, whether it's necessary legally or—

A I think it's an appropriate gesture.

Q Why?

A Because I think it's—although I believe I have the constitutional right to erect the creche, I am perfectly willing to accommodate other individuals and take whatever steps are appropriate to assure them that there is no impermissible government involvement. I think it's a question of reassuring those people in the community who might take exception to it as a gesture of good will.

Q Do you think erection of the creche without the sign would be permissible on publicly owned land?

A Yes, I do, probably. If there's a constitutional right to erect it, I think sign or no sign, you can erect it.

Q Why do you prefer to have the creche erected on publicly owned land versus privately owned land?

A I think there is a constitutional right to have it there, free exercise of my own religion and free speech.

Q Any other reason?

A Pretty much that.

Q Nothing else comes to mind now?

A No.

Q Have you ever seen any other religious symbol or structure on Boniface Circle other than the creche, the Christmas lights and the Christmas tree?

A On Boniface Circle? No. Your question was religious?

Q Religious.

A No, not that I can recollect.

Q I think we've identified a couple of holidays, and correct me if I'm wrong, that the Village celebrates, and they include Memorial Day, July Fourth and Christmas. Are there any others that come to mind?

MR. MURPHY: I think she testified previously about several Jewish holidays.

A The schools are closed for Yom Kippur, Rosh Hashannah. The library is closed for one day of Rosh Hashannah and the public employees are given paid holidays for both Good Friday and Passover. Easter is also a Sunday, so they are closed. I know the schools are closed those

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A The commentary.

Q Could you read it out loud?

MR. MURPHY: The whole thing?

MR. LANDMAN: Let's go for a while and see what it says.

A Do you want me to read—

Q Everything.

A —everything?

Q To the extent you can.

A Even the scratch-outs or do you want me to read for sense?

Q Just read everything.

A I have to jump around to tell you what it means. If I read them out of order, it's not going to make any sense. Why don't you let me read it first?

Q Fine.

A Let me read it for sense first.

"Mayor Stone's recent statement that the creche controversy was the most tragic aspect of her political tenure expresses a sentiment shared by all involved in this most unfortunate dispute. This tragedy, however, has been largely self-inflicted by the Mayor and her similar minded Trustees."

Jumping to No. 3 now. "Across the nation in

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Q Who on this list is Jewish?

A Drapkin.

Q D-r-a-p-k-i-n?

A Yes.

Q What does it say after that where you say "all different"?

A "All neighborhoods," and then, "They represent all of Scarsdale neighborhoods."

Q "And then underneath that at the very bottom?

A "Help from Lord, Day & Lord, Gilmour, DeSousa."

Q I think the record is going to be confused. If you start where it says "Gilmore"—

A "Gilmore" and then there's a "plus DeSousa, help from Lord, Day & Lord."

Q Who is DeSousa?

A He's a private practitioner.

Q And his name is spelled D-e-S-o-u-s-a?

A D-e-S-o-u-s-a. He originally felt he could not be a plaintiff, by the way.

Q Why is that?

A Because of his association, because of his volunteer activity for the Archdiocesse, he thought it might be a conflict.

Q Has the Archdiocese taken a position on this

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

[Curran Deposition Excerpt]

Q Have you ever sought approval from any other governmental body other than the Scarsdale Village Board of Trustees for erection of a creche?

A No.

Q In every year that you have sought permission to erect a creche, have you always sought permission to erect it at Boniface Circle?

A In every year that we have applied to the village board, yes, it has always been for the purpose of placing it on Boniface Circle.

Q For what reason was Boniface Circle chosen?

A Initially in 1956, 1957, the Christmas carol sing in Scarsdale was held at Boniface Circle, and it was at this time that a group of people decided that it might be a good idea to possibly purchase a creche and have it placed at this site every year, the site of the Christmas carol sing, and that's how that spot was initially chosen.

Q Have you ever considered any other piece of property in Scarsdale for erection of the creche in any year since 19—I guess 1971 would be the first year you were on the committee?

A No, 1973. I have been a member of the committee for ten years. I have been a member—I've lived in Scarsdale twelve, but a member of my committee since 1973.

Have we ever considered or—

Q [illegible] applied for any other other property since 1973 other than Boniface Circle?

A Yes, we have. The year that we first spoke to Mrs. Clark and her Human Relations Committee, 1980, I believe that was, we agreed that if the Frog Prince Restaurant could be obtained for the creche, we would be happy to place it there,

and the savings bank on the corner of Popham and Chase. I believe. It's not Hanover. It's Manhattan Savings, I believe. We agreed on both, those two sites.

In addition, in 1982, after we had a meeting with Mayor Stone and Mr. Tooley, and representatives from the Chamber of Commerce, representatives from the police force, all of the representatives from the Creche Committee, including their pastors and ministers, the representatives from the Human Relations, all of the present trustees and the newly-elected trustees, we had a meeting with them in the firehouse and we all agreed to the concept of Heritage Plaza, which was a piece of land, a part of Chase Park, and the idea was to take this parcel of land and make it private property for the purpose of erecting a creche, for folk dancing, for all types of displays, for whatever groups in the village would feel they could use it for.

I think those were the three sites. There was a fourth site that we did not know about that Mrs. Clark and her committee pursued in 1980, also, and that was the round circular piece of land on the southbound side of the New York Central. We would have been very happy to place the creche on this piece of land. The topography of the land is very similar to Boniface Circle, but that piece of property did not work out also.

MR. SCHWARTZ: Excuse me. You said in the course of your answer that the idea was—and then I will paraphrase your answer—to create private property out of a piece of Heritage Park.

Whose idea was that?

THE WITNESS: That was, interestingly enough, expressed at this meeting with all of these people, by both sides, by the Creche Committee and by members of the village board almost simultaneously. We, I think, had more or less been thinking in terms of this, and to say who verbalized it first, I don't know, but it just was almost a simultaneous suggestion.

Q This fourth site that you have just described, I think you said is to the south side of the New York Central, am I correct?

MR. SCHWARTZ: Southbound track.

A Southbound track, yes, it's an oval, circular piece of land.

Q Does that have a name, is that Depot Plaza?

A Depot Plaza is the name of the spot, yes.

Q Is that owned by the Village of Scarsdale?

A Well, that was the problem. Part of it was owned by the railroad, and very happily they were willing to have the creche put on this piece of land, but when Mrs. Clark and her committed pursued it, it was discovered that the greater portion of the property was owned by the village.

Q Did you have any discussions with the village about that piece of land?

A Mrs. Clark, the Chairman of the Advisory Council, told me Depot Plaza was unavailable because most of the property was village-owned land. We did not discuss Depot Plaza later with the Village Board.

Q I take it you were in favor of the Heritage Plaza proposal?

A Absolutely.

Q Now, I believe in 1980 you said that there was a discussion about placing the creche at the Frog Prince Restaurant?

A That was one of the sites that was suggested to our committee, yes.

Q As well as Manufacturers Trust?

A That's right.

Q Who made those suggestions?

A That suggestion was made by—at the meeting of the members of the Creche Committee, and the Human Relations Committee. In discussing possible sites throughout Scarsdale, this was the two pieces of property that both committees agreed on. As to whom suggested each site first or initially, I really don't remember.

Q And were you in favor of either of those sites being used for erection of the creche?

A Yes, we were. When we left that meeting, it was understood that if they could be obtained, that we would get

back to the rest of our committee and be happy to place the creche at either of those sites.

Q Am I correct, then, that it is not the position of the Scarsdale Creche Committee that the creche has to be erected on publicly-owned land?

A Are you speaking of the present moment?

Q Let's take 1980.

A Obviously in 1980 it was not the position of the Creche Committee that it had to be on publicly-owned land.

Q And that would be true in 1982 as well, I take it, based on the railroad property that was mentioned?

A The railroad property was also looked into in 1980.

Q I see. And again was it also looked into again in 1982 or was that entirely in 1980?

A That was strictly in 1980.

Q How about in 1981, what was the position of the Scarsdale Creche Committee with regard to whether or not the creche had to be on publicly-owned land?

A In 1981, we reapplied for permission and we were denied permission, and in that year, the creche was placed at the Frog Prince Restaurant.

Q Was that a satisfactory result for the year 1981?

A It was not satisfactory in the sense that we were denied permission, but it was satisfactory to the members of the committee in view of the fact that one of the pastors of—my pastor in my church received a great number of phone calls from elderly people expressing disappointment that the creche would perhaps not be displayed anywhere, and asked him to use his influence and to see if we could—if the committee would be willint to place it at the Frog Prince Restaurant property.

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creche on the Congregational Church property or on the Baptist Church property, which I also received an offer for, or not to put it up at all. And the committee decided not to put the creche up in 1982.

Q Did any members of the committee voice the fact that they were in favor of erecting it at Scarsdale Congregational Church?

A No.

Q Or the Baptist Church?

A No.

Q So the decision not to accept either of those offers was unanimous?

A Yes.

Q What reason did the committee have for not wanting to accept the offer of the Scarsdale Congregational Church?

A The reasons why we would not put the creche at the Congregational Church are several. I think probably the most important one is that the topography of the land is totally unsuitable to place this creche. From an engineering standpoint, it could not be done.

Q Did you have any discussions with any engineers about that?

A We did not.

Q Who drew that conclusion?

A Well, the conclusion was drawn because we had for 25 years put together this creche and know what type of a piece of land it must have in order to be displayed, and—

Q How about the Baptist Church?

A The Baptist Church land, in our opinion, is most unsuitable. The front of the church that faces on Popham Road is filled with bushes. Obviously you cannot place a creche there.

The other side, where they have a driveway, a very small piece of grass and then some concrete, is also unsuitable simply because it is a driveway, part of their parking lot, and the small piece of land is behind a hedge, which is probably about three feet high.

Perhaps the Baptist Church felt that we would want to place it on the other side of the church, which is, to my mind, a side street, and—

Q What is the name of that street?

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A Is that Authenreith? It could possibly be the end of Authenreith. I'm not too sure.

There is a very small grass plot in there, but that—it would never be seen.

Q What was the reason for not asking the Frog Prince Restaurant as to whether or not the creche could be erected there?

A We chose not to put the creche back on the Frog Prince property because the one year that we did place it there it was removed and damaged.

MR. SCHWARTZ: That is, removed by vandals?

THE WITNESS: That is correct.

Q The Frog Prince Restaurant is across the street from Boniface Circle?

A Yes.

Q When you submitted your application in 1982 to the village board of trustees, did you specifically ask for permission to erect the creche at Boniface Circle, or did you ask for other publicly-owned land in the village?

A We asked for Boniface Circle.

Q Was there any discussion among the committee members toward a view of asking with regard to other publicly-owned land other than Boniface Circle?

A No.

Q Has there ever been any such discussion with regard to publicly-owned land?

MR. SCHWARTZ: In 1983?

MR. LANDMAN: No, every since Mrs. Curran has been on the committee.

MR. SCHWARTZ: She has already testified.

MR. LANDMAN: I believe that the testimony previously has been about privately-owned land except with regard to the portion of Depot Plaza that is owned by the village.

MR. SCHWARTZ: And Heritage Plaza.

A Heritage Plaza is the only piece of publicly-owned land.

Q Now, directing your attention to Curran Deposition Exhibit A, the last paragraph. Certainly feel free to read the entire paragraph. I'm referring to the second and third lines:

"We make this offer in the interest of helping to heal this community by providing a privately-owned publicly convenient vantage point," et cetera.

Did you have an understanding after you received this letter from Mr. Kimball as to what was meant by the phrase "in the interest of helping to heal this community"?

A No. To heal this community.

Q Did you know what he was referring to?

A Well, obviously he felt a need of the community being healed in some manner, but, no.

Q Did you every discuss that with Mr. Kimball?

A No.

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of the bringing of this lawsuit, other than the representative of St. James the Less?

A No. Everybody was agreeable.

Q What message does the creche symbolize the you?

A It symbolizes peace on earth and good will to men.

Q Anything else?

A Are you referring to my specific creche?

Q Yes. When you say your specific creche, I mean the creche that is part of the village—I'm sorry, the Scarsdale Creche Committee creche.

A How I view it?

Q Yes.

MS. GOODMAN: Could we go off the record for a second?

MR. LANDMAN: Yes.

(Pause.)

MR. LANDMAN. On the record.

A I also view the creche as a beautiful piece of art.

Q Does it also recognize in your view the birth of Christ?

A Yes.

Q Does it have a religious meaning to you, the creche?

A A religious meaning? It speaks of the historical religious event of the birth of Christ, yes.

Q Does it also have a secular meaning to you?

A Yes, I would say so.

Q And that would be the peace on earth, good will toward men?

A Yes.

Q Anything else?

A I think it speaks of tranquility, tolerance and love.

Q Is it the purpose of the Scarsdale Creche Committee to express that to any group?

MR. LANDMAN: "That" being what?

Q The peace on earth, good will to men as well as the recognition of the birth of Christ, to any groups or individuals in the Village of Scarsdale?

A I think you've asked the question—we have established that one has a religious significance and the other is a secular, and if I could perhaps answer each question.

Q Separately?

A Separately.

Q Sure. Let's take the religious first.

A So the question would read?

Q The question would be, does—it is the purpose of Scarsdale Creche Committee to recognize the birth of Christ in part by expressing a message to individuals or groups within the Village of Scarsdale?

A I would say that we are expressing the message of the birth of Christ to all people who pass by, to no specific group. We exclude no one.

Q Any and all people that pass by?

A Any and all people that pass by and view it.

Q Pass by Boniface Circle?

A Yes, and my answer to the expression of it representing peace and good will and tolerance, absolutely we would want to express that to all people, also.

Q Does the Village of Scarsdale play a role in celebrating the birth of Christ?

A I would say yes. The entire business community in Scarsdale is beautifully decorated with Christmas wreaths and

on each wreath is a sprig of lights. The Town Club has permission to conduct a carol sing and that's a very festive time.

MR. SCHWARTZ: Where is the carol sing?

THE WITNESS: The carol sing this past year was on Boniface Circle, and the Christmas tree—the tree on Boniface Circle was lit with Christmas lights.

Q Is that always the practice in the Village of Scarsdale to the extent you can recall?

A No. The carol singing has not been on Boniface Circle for many years. It originally started at Boniface Circle, and this was how the Creche Committee was born, when people stood on Boniface Circle to sing the Christmas carols and holiday songs, a group of people thought it might be a nice idea to erect a creche on this piece of property while the singing was going on and that was the original beginnings in 1956, 1957.

When the new Village Hall was built, the carol sing was held in front of the Village Hall up until this year when it was brought back to Boniface Circle.

Q How long does the carol sing last?

A I really don't know.

Q More than two hours?

A I really can't tell you.

Q Does it last more than a day, is it a two-day performance?

A No. It take place within one day.

Q Going back, I believe you testified that in 1980 the Frog Prince Restaurant was offered to the Creche Committee as a site available for erection of the creche, is that correct?

A That was the year we placed it on—

Q No, 1981 was the year, and it could be that you might have just been confused on the years, and I just wanted to clarify that.

A No—

Q In 1980, the creche was placed at Boniface Circle. The question is whether or not in 1980 the Frog Prince Restaurant

had been made available for consideration by the Creche Committee to place the creche.

A No, it wasn't.

Q The first time it was available was the year that it was utilized?

A The year that it was utilized, that's correct.

Q Why did the Creche Committee apply for permission to use Boniface Circle, to the Board of Trustees?

A Why do we do that?

Q Yes.

A Because to our knowledge it is the only way that we could over the years legally place such a symbol on public property.

Q Did you consider applying to the Village Manager for permission?

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To me, I can see religious significance in wreaths.

Q How about carolling, is that part of a religious custom or practice for you?

A Oh, yes.

Q And that would include the Town Club's carolling?

A Yes.

Q Does your religion command that a creche be erected?

A No, it does not.

Q Do you know of any religion that does make such a commandment?

A No.

Q The American flag that's in Boniface Circle, I assume that flies approximately every day?

A I would assume the same thing, yes.

Q Do you know who owns that American flag?

A No.

Q Do you know who puts it up?

A Yes, I believe it's a member of the police department.

Q And I assume they take it down at the end of the day?

A And, yes, I have seen them putting it up and taking it down.

Q Would that lead you to believe that it's probably the village's flag?

A Not necessarily. It could be—the flag could possibly be put up by whoever was on duty in town, so to speak, whether it be a merchant or someone from the post office or someone from the police force. I really don't wish to assume as to the ownership of the flag.

Q Would you participate in the erection of the creche every year at Boniface Circle?

A Yes.

Q How far was the creche erected from the war memorial, would you estimate?

A I am a very poor judge of distance. I do better with a ruler. Quite a distance from the war memorial. It's basically on the other side, close to the sidewalk, the other side of Boniface Circle.

Q So the creche can be observed from Chase Road?

A Yes.

Q Can it be observed while driving by in a car on Chase Road?

A It can be seen, but it's not overly noticeable.

Q But there's no obstruction between the creche and Chase Road?

A In front of the creche, no. Facing the creche on my right-hand side where that huge tree is, if you were approaching the creche from that side, you possibly would not get too good a view of it, because that huge tree would interfere. You really have to be facing it directly in order to see it.

Q Since 1977, have you placed a sign at the creche every year in which it's been erected at Boniface Circle?

A I don't recall the year. We have placed a sign on the creche every year since the village trustees required us to do so.

Q Is that sign able to be observed while riding in a car on Chase Road?

A The creche itself was not meant to be observed while riding in a car. It was meant to be observed by people passing

by on the sidewalk. Therefore, I would say the sign is able to be read by people passing by on the sidewalk.

Q But not in a vehicle?

A I have never tried it, so I couldn't really say. If I were a passenger in a car, perhaps I might read it, but I doubt if I would if I were driving.

Q If you are a passenger in a car, can you see the sign easier or can you see the creche easier from Chase Road?

A You can see the creche.

MR. LANDMAN: I would like to have marked as Curran Deposition Exhibit C a sign which has been produced to us by the plaintiffs which we will ask the witness to identify.

(Sign marked Curran Deposition Exhibit C for identification, as of this date.)

Q I show you, Mr. Curran, what the reporter has marked as Curran Deposition Exhibit C and ask you if that is the sign that has been erected—

A That is the sign that was on the creche.

Q As far as the size of the sign, was that something dictated by the Board of Trustees or was that chosen by the Scarsdale Creche Committee?

A When the Board of Trustees asked us to place a sign on the creche, the only stipulation they made was the wording of the sign.

Q And the size was selected by the committee?

A The size was selected by the committee, but I would like to mention that this sign is larger than the initial sign that we placed there.

Q How long was the initial sign placed there, how many years?

A I would say a year.

Q Then this sign replaced it?

A Then this sign replaced it.

Q Were the same types of letters used on the initial sign?

A Yes.

Q So the letters themselves were the same size?

A The same type of letters was used. I do not know whether the letters themselves were the same size. If anything, these letters would be larger.

MR. SCHWARTZ: The current sign?

THE WITNESS: Yes, the current sign. The current letters would be larger than the original.

Q Have you ever heard anyone on the committee say that Boniface Circle has the war memorial, that is where the creche should be as opposed to other publicly-owned land?

A No.

Q Would you agree with that statement?

A No. There is no relationship between the creche and the war memorial.

Q Have you ever heard anyone mention that relationship?

A No.

Q Have you ever seen any structures at Boniface Circle that were erected by a private group or individual other than the creche?

A I have never personally seen any, no.

Q Am I correct that it would not be the position of your committee that the creche should be at Boniface Circle or nowhere else?

A Would you repeat that?

Q Sure.

Am I correct that it is not the position of your committee that the creche should be at Boniface Circle or not erected?

A I find too many negatives in that sentence.

Q Fine. Is it the position of your committee that the creche should be at Boniface Circle or not erected?

A It is the position of my committee that the creche should be at Boniface Circle.

Q And if it cannot be at Boniface Circle, it should not be utilized?

MR. SCHWARTZ: That's a hypothetical question. It has not arisen yet for 1983. You can ask her what things she would prefer and if she knows how to answer it, she may.

A I would rather not say what I prefer for 1983.

Q That was the position in 1982, though?

A The position in 1982 was that we were not going to erect the creche, and that we would meet to decide the future of the Creche Committee, the future of the Creche Committee up to date is this lawsuit.

Q And there have been no discussions with regard to 1983 in case for some reason a decision is made that Boniface Circle may not be utilized?

A We have learned not to speculate as to the future.

Q I take it your organization does have insurance on the creche?

A Yes.

Q Is that liability insurance?

A We have produced to the Village board when asked to do so evidence of insurance.

Q Do you know of any other private use of Boniface Circle?

MR. SCHWARTZ: Other than she has testified to?

MR. LANDMAN: Yes.

A By a group?

Q Yes.

A By a legitimate group of some kind?

Q Any group.

A No.

Q How about private individuals.

A Well, Boniface Circle is used by individual citizens.

Q As a park?

A As a park. It serves to my mind as a tremendous haven to pedestrians and shoppers. It's right in the middle of the business district, and the expansive street there would be dangerous unless we had that little haven right in the middle.

Q Now, you have gone to board meetings at which the creche was discussed, is that correct?

A Yes, that is correct.

Q Have you ever gone to any board meetings where the creche was not discussed?

A I believe I have gone to two.

Q Where the creche was not discussed?

A Where the creche was not discussed.

Q For what purpose did you go to those meetings?

A I don't recall.

Q At those meetings, were there more people in attendance than at the December 1982 meeting at which the creche was discussed?

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the Scarsdale Creche Committee group and I did not want to increase the confusion.

Q Are you aware of the fact that the Human Rights—I'm sorry—Human Relations Council has recommended that the creche be placed on privately-owned property, church property, rotated among the churches?

MR. SCHWARTZ: Among other recommendations.

MR. LANDMAN: Yes. That has been one of their recommendations.

A The first recommendation, if I recall correctly, was that the creche be placed on Boniface Circle, the village board and mayor give permission to the Creche Committee to place it on Boniface Circle.

Q What other recommendations have they made that you are aware of?

A They have suggested that we try to place it on church property on a rotating basis.

Q And has an attempt been made to do that by your committee?

A When we first met with the Human Relations Committee in 1980 at their request, we gave them a list of reasons why that suggestion was not overly practical and they—

Q And what are those reasons?

A The first—one of the reasons that we gave was that we felt that it would destroy the ecumenical aspect of the Creche Committee. We also were aware that there were many churches in the group—the topography of the land at these churches was totally unsuitable. There are three churches that are on Route 22 in Scarsdale, which is a state road, 35 mile an hour traffic going by, not suitable, not in accord with the initial purpose of the creche, namely, that people stop by and view it.

Many of the churches were not centrally located, they were at a great distance away from the center of town. We felt that in some cases, such as in my church, which has an indoor creche and an outdoor creche, that it would be a little repetitious to have a third creche, and that would be true of any other church which would already have an outdoor creche.

That's all that I can just at the time remember, but we did explain in great detail to Mrs. Clark and her committee in 1980.

Q How would erection of a creche at various churches in the village destroy the ecumenical aspect?

A Because there would only be maybe one or two churches that possibly might fall into the realm of possibility.

Q Because of topography and location?

A Land-wise, et cetera. If the creche were placed at this church every year, then it would begin, after two years it would seem as if the creche was indeed the property of that particular church.

Q Just by the fact that it was placed on the same piece of land?

A Same spot, that's right.

Q It becomes identified with that—

A With that church, yes.

Q Would a sign—was there thought given to a sign that would say that it was not that church's creche but it was the creche of the committee?

A We prefer not to put a sign on the creche at all, and if you were on private property, that would not be necessary.

Q Why would that not be necessary?

A Because you would be on private property. The year that we were on the Frog Prince property, we did not put up a sign.

Q Would you agree that—what effect would a sign have if it was placed—if the creche was placed on church property and there was a sign that said, this is the property of the Scarsdale Creche Committee?

A I have no idea what effect that would have.

Q But you preferred not to have a sign, the committee preferred not to have a sign?

MR. SCHWARTZ: I object to the form of that question, but you can answer it.

Q Am I correct that the committee prefers not to have a sign on the creche?

A We certainly would prefer not to have a sign, but if it is required when we are on public property, we would certainly put it there.

Q Anything else other than what you have just said as far as why the rotating of the creche among the various churches would destroy the ecumenical aspect of the erection of the creche?

A I think that's the reason why.

Q That's the reason?

A Yes.

Q Is it your committee's view that the creche should be on publicly-owned land or is it your view that it should be on Boniface Circle, whether that is publicly-owned land or not?

MR. SCHWARTZ: Her views before the commencement of this lawsuit?

MR. LANDMAN: Yes.

MR. SCHWARTZ: Lawsuit aside, do you have a preference that it be on publicly-owned land no matter where as opposed to privately-owned land? Is that your question?

MR. LANDMAN: Yes.

MR. SCHWARTZ: Or put another way, if there were an equally suitable site, one publicly owned and one privately owned, would you care—

THE WITNESS: We would want it on the site that we thought would be the most attractive for the creche.

Q Whether it was publicly owned or not?

A Whether it was publicly owned or private.

Q Have your views changed since this lawsuit on that question?

A No, I don't think so.

Q Is part of the purpose of the Scarsdale Creche Committee to keep Christ in Christmas?

A The purpose?

Q Yes.

MR. SCHWARTZ: Go ahead, answer it.

A I think we established that at the beginning of our conversation, the two aspects of the creche.

Q And that would be one of them?

A The peace on earth and good will toward men and as a representation expressing the birth of Christ.

Q And the committee would view erection of the creche as a yearly tradition?

A Oh, yes.

Q I show you a newspaper article and ask that it be marked as Curran Deposition Exhibit D. It is produced from your files, I believe, and it's marked Scarsdale Inquirer, November 25, 1976. The headline is "Creche Moved; Lawsuit Planned."

(Newspaper article dated November 25, 1976 marked Curran Deposition Exhibit D for identification, as of this date).

Q Mrs. Curran, I show you this article and refer you specifically to the second paragraph, but why don't you take a look at the article and see if that is, in fact, an article which you have previously seen.

A You want the second—

Q The first question is whether or not this is an article which you've previously seen.

A Yes.

Q And it did appear at the time stated in the Scarsdale Daily Inquirer?

A Yes.

* * * * * *

Q Okay. That's fine.

MR. LANDMAN: I would like to have marked as Curran Deposition Exhibit F a November 23, 1976 letter to the Village Board from the Scarsdale Creche Committee.

(Letter dated November 23, 1976 marked Curran Deposition Exhibit F for identification, as of this date.)

Q Are you able to identify Curran Deposition Exhibit F?

A Yes. That was sent by the Scarsdale Creche Committee.

Q Did you draft this document?

A With the assistance of a few of the members of the committee.

Q The last paragraph on the first page states, "We would consider the removal of the creche from Boniface Circle an erosion of our spiritual values, and an affront to the drafters of our Constitution, whose intent was to protect religious freedom and an injustice to the people of Scarsdale whose interfaith activities have grown in stature over the years."

I take it you agreed with that paragraph when this letter was sent.

A Yes.

Q And does the committee believe that the erection of the creche is an interfaith activity?

A Yes.

Q And what are the faiths that participate in that activity?

A Over the years, the Presbyterians, Episcopalians, Lutherans, the Catholics, the Baptists, the Congregationalists, the Greenville Community Church.

MR. LANDMAN: I would like to have marked as Curran Deposition Exhibit G a two-page memo to Mayor Jensen and Board of Trustees from Lowell J. Tooley regarding village board meeting agenda for November 23, 1976.

(Two-page letter marked Curran Deposition Exhibit G for identification, as of this date.)

Q I show you Curran Deposition Exhibit G.

I ask you whether or not you are able to identify the handwriting.

A That is my handwriting.

Q And were those notes taken at a meeting?

A Those notes were taken at the village board meeting on November 23, 1976.

Q Could you read what those notes say, starting

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Q Would you be able to see the creche easier at night or the light bulb easier—I'm sorry—the sign easier at night without the street light?

A Would I be able to see the creche or the sign easier? I believe that passing by there at night, as I did several times, the entire structure was just an outline.

Q And after the light bulb was no longer used, was the street light working?

A No, not as long as we were there. I did notice that street light this year, it was working fine.

Q Did you ever investigate why it wasn't working on those prior years?

A I did in one particular year report it three—

MR. SCHWARTZ: Go ahead. I am sorry.

—times in a letter to the village, and I never received a response concerning as to why the light was out.

MR. LANDMAN: I would like to have marked as Curran Deposition Exhibit H, a memo to Mayor Jensen and the Board of Trustees from Lowell J. Tooley, subject village board meeting agenda for November 27, 1979.

(Memo marked Curran Deposition Exhibit H for identification, as of this date.)

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MR. SCHWARTZ: What's your question?

MR. LANDMAN: If I can see the document.

Q With regard to placing the creche on church property, the statement, "In addition, the members of the committee have unanimously agreed that the creche was originally intended to express the ecumenical spirit that exists among the churches in Scarsdale. To put an end to this longstanding tradition in our community is not the choice of the committee."

Is your explanation which you have previously testified about with regard to eliminating the ecumenical purpose what you were referring to in page 2 of this exhibit?

A Yes.

Q Could you identify the third letter, is that written by you?

A That is written by the Scarsdale Creche Committee and it is addressed to Rev. Kendall—to the Scarsdale Clergy Association in care of Rev. Kendall.

Q What was the purpose of that letter?

A We enclosed a copy of the letter that we had sent to Mr. Herbek, the letter that we had just spoken about, and we thanked those churches who had offered space to display the creche and suggested that we wished to continued the tradition, asked him to share both these

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A I think she is a lifetime resident.

MR. LANDMAN: I would like to have marked as Curran Deposition Exhibit N a statement of the Scarsdale Creche Committee, Mrs. John J. Curran, Chairman, November 11, 1981.

(Statement dated November 11, 1981 marked Curran Deposition Exhibit N for identification, as of this date.)

Q I would like to show you this document and just ask you whether you can identify and whether you authored this exhibit.

A This was a statement of the Scarsdale Creche Committee that I believe was submitted to the local newspapers.

Q Did you write it?

A In conjunction with other members of the committee.

Q And did you agree with everything that was written in it at the time you wrote it?

A Yes.

Q Would it be correct, then, to say that the village, by granting permission to use the Boniface Circle for erection of the creche, would be an example of church-state cooperation?

A Would we state that the village, granting us permission to place the creche on Boniface Circle, could be considered an example of traditional church-state cooperation?

Q Yes.

A I suppose you could, yes.

Q And you would consider it as such?

A Church-state cooperation, yes.

Q Did you consider that the creche's sole purpose was secular or was it a mixed religious and secular purpose, or was it solely a religious purpose?

A I think we had established that at the beginning of our conversation.

MR. SCHWARTZ: She has really answered that question already.

MR. LANDMAN: All right.

I would like to have marked as Curran Deposition Exhibit O a November 24, 1981 letter to Mayor Jean Stone from Lynne B. Clark, Chairman, Advisory Council on Human Relations.

(Letter dated November 24, 1981 marked Curran Deposition Exhibit O for identification, as of this date.)

Q I show you Curran Deposition Exhibit O and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

[Butler Deposition Excerpt]

A My basic work involves institutional public relations. I work for the Japanese steel industry, among other clients, and I do an information program for them in the United States.

Q Meaning you write informational things?

A I write material, work on speeches, conduct meetings and seminars, travel to various cities.

Q The house you live in now is a single-family house?

A Yes.

Q It has a lawn?

A Yes.

Q Do you and your family display any kind of decorations at around Christmas time?

A Yes.

Q Do you have a Creche?

A Yes.

Q Where do you display that?

A I display the Creche on the top of my piano in the living room.

Q Do you have any outdoor decorations?

A Yes.

Q What are they?

A A Christmas wreath.

Q Do you have a lawn?

A Yes.

Q Is that in front as well as back?

A Yes.

Q Do you put a Creche there?

A No.

Q You never have?

A No.

Q Do you know, within your experience, whether any of the people who are plaintiffs with you in this case display creches at their homes at Christmas time, outdoors?

A No. Within my knowledge, no.

Q And when you say you never have, I take it that means your prior Scarsdale dwelling as well as the place you live now.

A That's correct.

Q Have you ever displayed a Creche in front of any house you occupied?

A No.

Q Do you know anyone in Scarsdale who has a Creche in front of his or her house?

A When you say "do you know," could you rephrase that and just what the word "know" means?

On the Xeroxes on the photos, we don't do as well, but if you have any trouble, let us know.

(A photograph was marked Butler Deposition Exhibit C for identification, this date.)

Q I'm showing you Exhibit C, and I ask you if that appears to be, to the best of your recollection, a photograph of the Creche as it appeared on Boniface Circle on one or more of the occasions when you observed it there.

A Well, frankly, I don't recall the specific placement, but you show me a picture—

MR. MURPHY: Just answer the question.

A I don't recall the specific placement in relationship to the flagpole.

Q Let me ask you this: As nearly as you can recollect, if I ask you, as I am, does this appear to be the way it looked, what is your answer?

A Well, I can only answer you honestly that I don't recall the placement at the time. I just don't recall it.

Q Looking at the Creche without the placement, does it look like the Nativity Scene that you saw on Boniface Circle?

A It appears to be the Nativity Scene that I saw in Boniface Circle.

Q Let me show you Butler Exhibit D.

(A photograph was marked Butler Deposition Exhibit D for identification, this date.)

Q Perhaps I should show you the original photograph because on the copies it may be excessively difficult. This is the new one, Exhibit D. Does that look like a detail you can recall from looking at the Creche?

A It appears to be the size of the figures that were part of the Creche display.

Q It appears similar to what you saw?

A Right, right.

Q It wouldn't surprise you if somebody testified that that was a picture taken—

MR. MURPHY: Objection to the form of the question.

Q You may answer. Would it surprise you?

A No.

Q And going back to Exhibit C, showing you the original, which I neglected to do before, does that assist you in any way in recognizing that as the Creche?

A As I had said, I didn't recall the the Creche placement in the proximity of the flagpole to where it appeared, just that it was in the grassy area, that was my recollection, my honest recollection.

Q That is, you don't recall it, as you perhaps jog your memory a little bit, as having been within ten or fifteen feet of the flagpole?

A Well, I don't remember the flagpole. I never took note of the flagpole, so I can't testify anything about the flagpole.

Q Keep Exhibit C for just a minute, if you would. Do you see in the lower left portion of the Nativity Scene what looks like a sign or a plaque?

A Yes.

Q I trust your eyes aren't so much better than mine that you can read that.

MR. MURPHY: Which photo are you talking about?

MR. FRANKEL: Exhibit C.

A Which is C?

Q The one in your right hand.

A No, I cannot read it.

MR. FRANKEL: I think we can stipulate that anybody who can read that is a freak. It doesn't come out in the photo.

MR. MURPHY: So stipulated.

Q But do you know what legend that plaque bore?

A No.

Q Do you know the substance of that legend?

A I know the substance of it.

Q What is it?

A The substance of it, to my understanding, was that it was maintained by the Creche Committee.

Q Mr. Landman draws my attention to Exhibit D, which is taken closer up to the Creche. Can you read the plaque on that?

A Yes, I can read it.

Q What does it say?

A "Creche Erected, Maintained by Scarsdale Creche Committee, A Private Organization."

Q You don't recall at this time the size of those letters on that plaque, do you?

A No.

Q Would you be able to tell us at what distance it could be read?

A No.

Q Would it be correct to say that it could not be read from the roadway passing Boniface Circle?

MR. MURPHY: By whom?

MR. FRANKEL: By anybody.

A Not by me. I assume that.

Q When you say not by you —

MR. MURPHY: Don't assume.

Q — is your vision poor?

A Yes.

Q Do you think somebody with acute vision could read it from the roadway?

A That I don't know.

MR. MURPHY: You're asking for an expert opinion?

MR. FRANKEL: Yes, I'm asking for an expert opinion.

MR. MURPHY: Objection to the form of the question.

MR. FRANKEL: I'm not testifying, but I think it will be shown that nobody could read it from the roadway.

Would you mark this Exhibit E, please.

(A photograph was marked Butler Deposition Exhibit E for identification, this date.)

Q I'm going to show you the original of Exhibit E, Mr. Butler, and ask you whether that appears to you to be the Creche as you saw it on Boniface Circle.

A Yes.

MR. FRANKEL: Can we have this marked Exhibit F.

(A photograph was marked Butler Deposition Exhibit F for identification, this date.)

Q I ask you the same question with respect to Exhibit F.

A Yes.

MR. MURPHY: Could you repeat the question for me, Mr. Reporter?

(The last question was read by the reporter.)

Q Now, you've said you didn't remember its location in respect of the flagpole because you didn't pay any attention to the flagpole, is that correct?

A I didn't — yes. I didn't notice it.

Q Do you remember — and perhaps I've asked this, and I apologize, but I don't remember the answer — do you remember its approximate distance from the War Memorial?

A You did ask, and, 30 feet or so. That's a guess.

Q When your group —

MR. MURPHY: Objection to guesses. Go ahead.

Q Your group is composed of people different from the Scarsdale Creche Committee, is it not?

A When you say "your group," —

Q The group who are plaintiffs in this action.

A The plaintiffs, yes.

Q And the group of applicants in February of 1983 differs from the membership of the Scarsdale Creche Committee.

A To my knowledge, yes.

Q When was your group formed?

A Could you just rephrase the question about —

Q When was the group which made the application of February 3rd, 1983, which is Butler Deposition Exhibit A, when was that group formed?

A Approximately sometime in late January or sometime in January.

Q In discussing the purposes and objectives of your group, did you consider where you would wish to put the Creche in Boniface Circle?

A I don't think the logistics were discussed.

Q Was there any discussion, if I may press you a little bit, of placing it in the same spot that it had occupied in the past?

A The general feeling would be it would be in a similar spot, yes.

Q About the same location?

A A similar location.

Q By similar spot, you mean geographically at a point around the same point on the ground, is that correct?

A Yes.

Q Tell me — I didn't bother you much with this and I won't — but do you remember how many years, in your experience, how many different years you observed the Creche at Boniface Circle?

A Two or three years.

Q Did you yourself during the Christmas season go to Boniface Circle with a special purpose to observe the Creche there?

A With the special purpose of observing the Creche only, no.

Q And if you wanted to expand on that, you may.

A That's it.

Q In the course of any given Christmas season, and I ask you to approximate, when you saw the Creche, on how many days do you think you observed the Creche?

A Two or three.

Q When you observed it, did you engage in any kind of private religious activity in the nature of praying or anything like that?

A No.

Q This case is about religion, so I have to ask that question. It did not play, as I understand you, any ceremonial role in your own religious observance?

MR. MURPHY: Objection. He didn't say that.

Q It is correct to say that it did not play any ceremonial role in your own religious observances?

A Could you rephrase it? What is this —

Q The Creche.

A The Creche on Boniface Circle?

Q Yes.

A So could you repeat the question?

Q You've done it for me. Did the Creche on Boniface Circle play any part in your own religious observances, yours?

A It was a commemoration of an event which was also the commemoration of Christmas, the birth of Christ, and in that regard it helped in my celebration of that particular season. That's the feeling I got out of it, anyway.

Q When your group formed and made the application of February 3rd, 1983, prior to applying, did you discuss the positions of the group and the positions it would take in respect of its application?

A Could you repeat that, please?

MR. FRANKEL: Read the question.

(The pending question was read by the reporter.)

A What time frame are you talking about? I'm still unclear.

Q At any time prior to making —

A At any time prior, did we discuss —

THE WITNESS: Read it again, please.

* * * * * *

Circle?

A Yes, I had a number of discussions.

Q Now, in those discussions, did you hear references to a view held by other residents of Scarsdale that if there were to be a Creche on public land, it ought to be somewhere other than Boniface Circle?

A If there were — could you repeat the last phrase?

MR. FRANKEL: Please read the question.

(The pending question was read by the reporter.)

A I didn't hear any reference to that, no.

Q And none of your people discussed that with you?

A No.

Q As you understood the position of the group, the application of which you authorized to have signed with your name, was the position that the Creche ought to be allowed at Boniface Circle and nowhere else?

MR. MURPHY: When you say nowhere else, you mean no other public property?

MR. FRANKEL: No other place is what I said.

A Our application was for the Creche in Boniface Circle. We didn't consider any other place. We only considered the Boniface Circle in terms of our application.

Q When you came to write an ad for the Inquirer

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A I seem to recall that discussion.

Q And do you recall that Mrs. McCreary said that was correct, that she did not consider placing it on church property rather than at Boniface Circle?

A My recollection is not clear on that. It's possible, but I just don't recall.

Q Were you aware that more than one church had, prior to December of 1982, offered its property as a site for a Creche?

A I'd heard that in discussions, yes.

Q And if you don't remember Mrs. McCreary's position, let me ask you what your position was. Were you willing to have the Creche, your group's Creche, placed on church property rather than the public circle?

A No.

Q Is it fair to say, then, without being vehement, that you insisted it should be at Boniface Circle?

MR. MURPHY: Insisted?

Q Insisted, and no place else?

MR. MURPHY: I object to that. You can answer.

A Yes, our application was to place the Creche in Boniface Circle.

Q And you knew, did you not, that there had been offers of church property?

* * * * * *

A No.

Q Now, will you tell us in your own understanding, the message intended to be conveyed by having the Nativity Scene on Boniface Circle?

A It's a commemoration of the birth of Christ which is celebrated at Christmastime.

Q Does it express your own religious convictions concerning the birth and the meaning of Jesus Christ?

A Yes.

Q Is one of its purposes to celebrate your personal religious convictions?

A I look upon Christmas as a celebration of the birth of Christ, and I celebrate in the birth of Christ as well.

Q But referring specifically to your purposes in wanting a Creche at Boniface Circle, is one of your purposes to celebrate your personal religious convictions?

A It's part of my religious convictions, and it's a time of celebration for me, and so it is part of my celebration, yes.

Q The Creche at Boniface Circle, if you can achieve its placement there?

A That's part — yes, that would be part of my celebration to commemorate the day and the time.

* * * * * *

Q It's not a compulsory way of expressing your faith, is it?

MR. MURPHY: What do you mean by compulsory?

Q Is it compelled by any doctrine of your church that you have a Creche displayed?

A No.

Q It's not compelled that you have one either on your own property or anybody else's property, isn't that right?

A Yes.

Q That's what I was really getting at. In that sense, it is a voluntary expression, well, in the same sense that we would still say that you're compelled to refrain from adultery by the dictates of your religion; isn't that right?

A Yes.

Q There is no such compulsion with respect to displaying a Creche, isn't that right?

A There's no compulsion.

Q And, in fact, many people who share the Roman Catholic faith that you once subscribed to, and your present religion, do not display creches?

A Many? I don't understand the question.

* * * * * *

issues, like raccoons.

Q I haven't asked you one question about raccoons. I have one here, but I'm going to—

A What was the question again?

Q The question is: It's true, is it not, that your effort to persuade the trustees to vote for the placement of a Creche or the allowance of a Creche at Boniface Circle has prevailed with some of them and not with others? It's not meant to be a trick question. It's obvious—

MR. MURPHY: It's not obvious. I don't know how you could know it. Do you mean some trustees agree with his position and some don't?

MR. FRANKEL:That's it.

A I can't answer the question.

Q Is the question of having a Creche at Boniface Circle a subject on which you would describe your feelings as being deep?

A Being deep?

Q Strong or deep?

A Strong. I feel I have or the people have the right to that display and, therefore, I have a deep conviction concerning that.

Q Is it your position that on such a subject

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MR. FRANKEL: I don't remember the words I used, but I'm going to ask you now again—

MR. MURPHY: Ask the question, Judge, and we can proceed. Just note my objection to the question.

BY MR. FRANKEL (Continuing):

Q I want to know whether your deep conviction about the right to place a Creche on Boniface Circle plays any part in your judgments when you vote for trustee.

A It plays a subjective role in the way I vote.

Q Do you and your neighbors—I know about your nonpartisan slate, but do you and your neighbors discuss the trustee elections?

A To a certain extent, but very limited.

Q In those discussions, have your heard others say that the position of the candidate respecting the Creche affects the way they vote?

A Very little of that.

Q Have you heard some?

A If some, one or two people; very, very little.

MR. FRANKEL: Could we take about five minutes while we see if we have anything more?

(Short recess taken.)

MR. FRANKEL: On the record.

BY MR. FRANKEL:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

[Stone Deposition Excerpt]

A Oh, no; he simply got a higher position.

MR. MURPHY: Would you please mark as Stone Exhibit 1 a copy of a letter purportedly to Mrs. Stone dated November 20, 1982, from Dorothy S. Patterson.

(Copy of letter dated November 20, 1982, to Mrs. Stone from Dorothy S. Patterson, marked Plaintiffs' Exhibit (Stone) 1 for identification, as of this date.)

BY MR. MURPHY:

Q Can you identify this letter?

A I remember this letter because I tried to answer it and I couldn't find this woman high and dry. I called every person I could think of in Garden City and I couldn't find her.

Q This letter is to you. You did receive the letter, I take it?

A Yes, I did.

Q Did you receive this letter on or about the time of its date?

A To the best of may knowledge, yes.

Q Were copies of that also sent to the other members of the Board of Trustees?

A It says that it was.

Q Did you discuss that letter with any of the other members of the Board?

A I don't remember.

Q The letter, ma'am, refers in part to the use of Wayside Cottage by a religious organization.

A Yes.

Q Is that accurate, by the way?

A Yes, I believe it is.

Q Were you aware of it at the time you received the letter, or did the letter bring it to your attention?

A No; this letter brought it to our attention.

Q Does that religious organization or any other religious organization still use Wayside Cottage?

A You know, I am not mayor now. I really don't know.

Q As of the date you ceased being Mayor.

A Yes.

Q Did you feel that that use of Wayside Cottage was in any way inappropriate?

A All of these things were a puzzlement to me. As I say, I am not an attorney, and as this got—took a more legal turn, the answers got harder and harder.

But the differentiation between, say, this use and one use and another use, it is a hard thing for me. It's hard for me to say—answer you, did I feel it was an inappropriate use.

If I have to say yes or no, I will have to say no, but it certainly is a gray area.

Q With that qualification, which I can fully understand, why do you make a distinction in these two situations, one being the use of the cottage by the congregation and the other being the display of the Nativity Scene, in your own mind?

A In my own mind, in the first place, the village leases on a ten-year basis for the Junior League of Scarsdale Wayside Cottage.

So in a sense they are the renters, they rent to various people because they need the income to run it.

Also, that particular use—and another religious group uses it as well—is a coming and a going kind of use. It's a "speaking" use.

The Creche, the placement of the Creche in the center of the village, you know, in Memorial Park, is more permanent, it is a solid seeable religious artifact—if that is not a bad word—I don't know—and you see it there in the heart of Scarsdale on village property like the village is supporting it.

The other is a renter who comes in to Wayside Cottage, which is leased for a ten-year period by the Junior League of Scarsdale.

Q Were you aware or are you aware that the village nevertheless contributes to the Wayside Cottage upkeep and what have you?

A Oh, yes.

Q And the distinction in your mind, if I understand what you are saying, is in part that the use by the congregation of Wayside Cottage isn't something that's perceived by the village, is that—

A You mean "seen," by "perceived"?

Q Yes.

A It's more that it is a transitory use, that it's an oral use, as it were. It's not something that's an object, a clearly defined religious object sitting on village property.

Q You don't consider the holding of religious services there—

A I have never been to one of the services. I really truly don't know whether seeing that letter

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A After the Creche vote, particularly the first year, I received—people assumed that if you voted against the Creche you were Jewish. Everyone assumed that I was Jewish because my husband is and my last name is Jewish.

Q Is "Stone" a Jewish name?

A It can be either way, yes.

And I received an awful lot of antisemitic letters. I am not saying they came from Scarsdale residents necessarily, but I have no way of knowing. I threw a great number of them away because they were trash.

I was told that there were antisemitic incidents at the high school with some of the Jewish students.

Q You were told that?

A I was told that.

Q By whom?

A Joel Lesnick, the president of the Board of Education.

The merchants were threatened with a boycott, and there were antisemitic overtones to that. Many people assume—some people assume that merchants are by their nature Jewish. The fact that most of these were Catholic was beside the point.

That led to my feeling that antisemitism was alive.

Q Can you tell me who threatened merchants with a boycott?

A No, I can't.

Q Can you tell me how you know about it?

A There was a flier, I believe there was a flier circulated in mailboxes and under windshield wipers on cars.

Q Do you know the source of those fliers?

A No.

Q Do you know if they originated in Scarsdale?

A No.

Q Why do you say that there were "antisemitic overtones," to use your expression, or is that something you are assuming?

A I am trying to remember.

Somewhere, either it was in a letter or in the flier—which I don't have—somewhere there was stated—I really can't—I would tell you if I knew—that "Why should the Jewish merchants get fat on our Christmas shopping when they won't allow our religious display."

Q Is this a letter or is it—

A I really don't know.

MR. MURPHY: I would ask for the production of that piece of paper, because I haven't seen it.

Q When was this?

A That was the first year.

Q 1981?

A Yes.

MR. LANDMAN: If we have it we will produce it.

MR. MURPHY: I would assume that; it goes without saying.

Q Is there a requirement in Scarsdale law or regulation that letters that come in to the Board of Trustees or what have you are maintained?

A Are kept?

Q Yes.

A When they come to Village Hall; because I get a lot of these in my home.

Q I see.

A Yes, they are stamped in and they are filed.

Q When you refer to an "awful lot of antisemitic letters," are these letters that came to you personally at your home or through the Village Hall?

A Both.

Q When you say you threw a lot of them out, that was, I take it, in 1981?

A Mostly in '81.

Q These, I take it, would be ones that came to your home personally?

A Yes.

Q When did you throw them out?

A I threw them out on receipt.

Q How do you define "antisemitic"?

A I wouldn't want to—

Q How do you determine? why do you label something—

A Because they use foul language in describing Jews.

Q That's your definition?

A That's part of it.

Q Is there anything else?

A Well, talking about Jews not fighting in wars, and standard type hatred slogans.

Q This is the kind of thing we would call "from crazies"?

A I would say a lot of it's from crazies.

Q An awful lot? You are talking about a roomful of letters or—

A No; I am talking about between 100 and 200 letters.

Q You threw out all of them?

A No; you have some of them.

Q How many did you throw out, if you recall?

A I have also tell you that Jan Seick threw out some, because she didn't want me to see them.

Q These would have been letters that came in through the—

A But addressed to me.

Q Well, to the Mayor?

A Yes.

Q Putting aside Ms. Seick for a minute—

A Yes, I would say I threw out fully half of them.

Q Half is what? Approximately, we are talking about what?

A 50, 70.

Q That were addressed to you personally.

A Well, my name got circulated through a newsletter with my address.

Q Where were these letters from?

A All over.

Q You mean all over the country?

How many of them, if you know, were from Scarsdale?

A Some would be postmarked Scarsdale but not signed. I would be guessing to give you a number.

Q Let me ask you this question:

Do you feel they represented the feelings in the Scarsdale community?

A Of some people, yes.

Q Would you say a majority of the people?

A No.

Q It would be a small minority of the people, if any, wouldn't it?

A I would think it would be a minority.

Q I would certainly hope so.

A small minority?

A Of raging antisemites, yes.

Q Were the antisemitic incidents at the high school described to you by Mr. Lesnick?

A No.

Q You make reference here to "the old

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time; and Bill Glendon.

Q Did they all run unopposed?

A No. I believe Warren Grossman ran in that election. But, you see, he didn't specifically run for any—

Q In any event, this would have been March of '82. And Ed Falkenberg, was he on the Board in December of '81?

A Yes.

Q And didn't he not vote against the Creche in December of '81?

A He voted against it.

Q And he was elected in March of '82?

A Yes.

Q Is the same true for Mrs. Underweiser?

A Yes.

Q Did you and Mrs. Underweiser in this conversation discuss why you needed a witness for this lawsuit?

A No.

Q What was your opinion of why you needed a witness?

A May I check with Judge Frankel?

MR. FRANKEL: Mrs. Underweiser is a lawyer as well as a defendant and has been acting in tandem with us, so I think I am going to plead a privilege on that.

Moreover, the two of them as defendants, if they discussed together the reasons we asked them to inquire about witnesses would reflect our legal advice, and I would plead privilege on that further ground.

And I will instruct the witness not to answer.

MR. MURPHY: Okay.

My saying "Okay" is not meant to intend that I agree with anything that counsel is saying, but if he instructs the witness not to answer, I am powerless to proceed on that at this point.

BY MR. MURPHY:

Q Has Mrs. Underweiser been retained by the village to represent them in this lawsuit?

A No. but she is chairman of the law committee.

Q Is it a fact that whatever rules the Board operates under, that if a resolution does not receive a majority vote, that it is defeated?

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

[Tooley Deposition Excerpt]

MR. MURPHY:

Q Mr. Tooley, will you state your name and address for purposes of the record, please.

A My name is Lowell Tooley. My address is 111 Spier Road, Scarsdale, New York.

Q How are you employed, sir?

A I am the Village Manager, Village of Scarsdale.

Q How long have you been so employed Mr. Tooley?

A I have been the Village Manager since April of 1961.

Q How were you employed before April of 1961?

A I was the Assistant Village Manager of Scarsdale from February, 1956 to '61.

Q How were you employed, if you were, sir, prior to February, 1956?

A I was Village Engineer and Manager for the Village of Shorewood Hills, Wisconsin.

Q I am sorry, I didn't get the name; is the

* * *

A Yes.

Q What is that degree?

A Bachelor of Science and Civil Engineering.

Q Did you serve overseas in the war?

A No.

Q Sir, can you tell me in general what your duties are as Village Manager of Scarsdale?

A Well, in general, I am the chief administrative officer.

Q If I may, my analogy, I am more familiar with corporate government than municipal government. It is fair to say that we could draw a proper analogy between a chief executive

officer of a corporation and a board of directors on the one hand, and your job on the board of trustees of Scarsdale on the other?

MR. LANDSMAN: I object to the form.

You may answer, Mr. Tooley.

A I am not clear as to my understanding of your analogy. But in general terms, I would answer that it would be my impression that that is the case.

Q That is fair enough.

As I understand the job, you are in effect the chief operating executive on a day-to-day basis on the Town government, is that fair?

A Yes.

And I would like to make a brief comment about the use of the word "executive."

Q By all means.

A The State statute declares the mayor to be the chief executive officer in a village of the type Scarsdale is, and, therefore, the administrative duties of the manager are those which are delegated to the mayor by the board of trustees, whereby the local law creating the position.

Q I understand.

The mayor of Scarsdale, I take it, is not supposed to be in any way a full five day a week—

A That's right.

Q To whom do you report to, Mr. Tooley?

A The mayor and the board of trustees.

Q Who reports to you, sir?

A All departments of the Village government are responsible to me.

Q And they are all under your supervision?

A Yes.

Q All right.

A So as not to be confused, the Village library, for example, is not part of it.

Q Is there a Highway Department?

A Yes.

Q Is that under your supervision?

A Yes.

Q Is there a Parks Department?

A No. There is a Department of Parks and Recreation.

Q And are the parks maintenance use of under the supervision of that department?

A Yes.

Q And they report to you?

A Yes.

Q How about fire and police, sir?

A Yes, they report to me.

Q Is that one department or two?

A Two.

Q How about legal?

A The Village attorney is appointed by the mayor with the approval of the board of trustees, and had dual reporting functions.

The Legal Department is responsible to me for personnel and purchasing, responsible to the mayor, board of trustees for policy.

Q How about the defense or prosecution of

* * *

It is a period of time around December 25, which might be two or three weeks before that.

Q Was there ever any problem caused by the length of time the creche was on display?

MR. LANDSMAN: Object to the form.

Q In any of the years we are talking about?

A Was there any kind of problem?

Q Caused by the length of days in which the nativity scene was allowed to be displayed?

A You mean—could you explain what you mean by problem?

Q Any problem. Did anyone ever complain that it's up there too long?

A I don't believe that I am aware of any.

Q Did the length involved in each particular year ever create any safety problems?

A Not that I am aware of.

Q Any traffic problems?
A Not that I am aware of.
Q Where in the part was the nativity scene displayed?
A On the Chase Road side of the park, I would judge, just in back of the sidewalk.
Q That would be on the—
A East side.
Q That would be on the east side, on the opposite side of the park from the war memorial?
A If you consider the part to be a triangle, it would be on the leg.
Q The other bottom leg of the triangle?
A The other leg.
Q The bottom leg?
A One leg, there are three legs in a triangle.
Q Okay.
Was it always in the same spot every year?
A To my recollection, yes.
Q Was any problem, again, traffic, safety, threat to the public order, what have you, ever caused by the location, particular location in the par of the display?
A Not that I am aware.
Q Did anyone ever object to the particular location in the park of the display?
MR. LANDSMAN: I object to the form.
Q I am not talking in general as to having it at all, but as to where it was in the park?
MR. LANDSMAN: Object to the form.
A No one objected to me.
Q Are you aware of any objection by anyone?
A I am not aware.
Q Did anyone, sir, to your knowledge ever complain? Again, I am talking about the Scarsdale Creche's nativity scene, Scarsdale Creche Committee's nativity scene, which I understand was last erected in 1980 in Boniface Circle.
Did anyone every complain about the proximity of the nativity scene and the war memorial?
A Not to my knowledge.

Q I ask you the same question with respect to the flag pole?
A No.
Q The answer is no?
A My answer is no.
Q By the way, sir, the American Legion, when the Creche applications were denied in '81 and '82, did the American Legion take a position on these?
A I don't know.
Q You don't know?
A I don't know.
MR. MURPHY: Would you please mark as Exhibit 21, a copy of the letter dated December 8, 1982, from Mr. James Metts, County Commander of
* * *
Q Have they been authorized to place banners anyplace else?
A I don't know of any authorization for banners, but they did have the symbol of the Red Cross in Depot Plaza—
Q But other—I am sorry.
A —Circle at some time.
Q Have you ever seen any banner or sign or cross that the Red Cross might have placed in Boniface Circle?
A Not that I recall.
Q But you recall them putting them in other locations, specifically at this bridge?
A Yes.
Q And is it your understnading that they were allowed to place them there in connection with their fund raising efforts during March?
A Yes.
Q Were there any discussions of any of those authorizations that you recall that the board had?
A I don't recall.
Q In general, do you recall any discussions between the board trustees regarding approval of the various uses that have come out over the years for use of the property?

For example, by the Boy Scouts, Girl Scouts, the American Field Service Club? When those letters requesting permission to do various things, which we stipulated are going to be coming into the record, were there discussions about whether those were fine uses; whether those were worthwhile purposes; and that, therefore, they should be authorized?

MR. LANDSMAN: I object to the form.

A Generally speaking, in response to the characterizations you have just used here of organizations, my recollection does not relate to the specific worth of a group or a purpose like United Way, so much as it would relate to other factors.

What kind of precedent does it establish? What does it do to traffic? What does it do to esthetics? Is it going to be something that in the opinion of the trustees it would be an affront to your sensibilities? Subjective kinds of evaluations as opposed to the merits of an organization itself.

And I do not mean by that that the merits of an organization are not significant in the decision. As an example, when the pumpkin sale is held at Chase Road, the Village board is very much aware that the proceeds are to be used for whatever they are, AFS or something of that sort, and would not be compelled—would not feel compelled in any judgment to extend the same privilege to an organization which was personal—

Q What do you mean by "personal"?

A People have applied for permission to sell Christmas trees on public land.

Q Um hum.

A And to keep the money. That is their, it is a commercial thing, and so all has been denied.

Q Mr. Tooley, who derives the proceeds from the proceeds of artwork at the annual or—at the bi-annual Scarsdale Bi-Annual Art Shows?

A I don't know. The Village doesn't.

Q Do you know whether any individual members retain the proceeds?

MR. LANDSMAN: Object to the form.

A I don't know if there are proceeds.

Q Do you know whether the Art Association has sold any of its artwork at those displays?

A I don't know.

Q Have you read the minutes?

A Of?

Q Of the board.

A The Village board?

Q Over the years.

A Yes.

Q Another question I have for you is about walk-a-thons. Have there been a lot of requests for walk-a-thons and marathons, and similar projects?

MR. LANDSMAN: Object to the form

A There have been requests for the conduct of marathons and walk-a-thons, and there have been a number of such events scheduled in the last few years.

Q Were you ever requested by the board to submit any criteria for their use in deciding whether or not a particular organization should sponsor or be permitted to sponsor a walk-a-thon?

A No. I have been requested to submit criteria for the behavior, I mean you can't throw papercups along the street, rules for the walk-a-thon promoters to abide by, and that sort of thing.

I don't recall any documentation for the termination of the organization to sponsor it.

Q Do you recall a discussion, though, about which organizations would be allowed to have such walk-a-thons, and which would not, in the board

* * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED IN PRINTING]

[Plaintiffs' Answers To Interrogatories]

Plaintiffs in Civil Action No. 83 Civ. 3266 hereby answer Defendants' Interrogatories as follows:

* * *

In the fall of 1982, before applying for permission to place the creche at Boniface Circle, Plaintiff Curran spoke with Ms. Clark about the possibility of displaying the creche on property other than Boniface Circle. Ms. Clark stated that a Mr. Ruggliano had told Ms. Clark that Mr. Malcolm Wilson, Chairman of the Manhattan Savings Bank, had advised Monsignor John Breheny of Our Lady of Fatima that the Creche Committee could display the creche on the bank's property during 1982. Plaintiff Curran advised Ms. Clark that that location would be acceptable to the Creche Committee and that she would speak to the Committee representatives. Plaintiff Curran contacted Plaintiff Pedulla, the Creche Committee representative of Our Lady of Fatima, to confirm whether Monsignor Breheny had received the offer. Plaintiff Pedulla called Monsignor John Breheny who stated that Mr. Wilson had not conveyed an offer to him for the use of the bank's property.

1983:

Plaintiffs have not made an effort to place the creche on property other than Boniface Circle to date.

Interrogatory No. 3

3. Please state whether the plaintiffs or any of them have ever been offered any site on which to place the said creche or

any other creche during the years 1960 through 1983. If any other sites have been offered, identify the sites and the owners of the sites which were offered.

Answer

1970-1975:

Plaintiffs were not offered any site on which to place the creche or any other creche.

1976:

Plaintiffs were aware that five churches had written to the Village Board to offer their property to the Creche Committee on a rotating basis for the annual display fo the creche. Those five churches were:

(1) Church of St. James The Less - Church Lane, Scarsdale, New York 10583

(2) Greenville Community Church - 270 Ardsley Road, Scarsdale, New York 10583

(3) Hitchcock Presbyterian Church - 6 Greenacres Avenue, Scarsdale, New York 10583

(4) Scarsdale Community Baptist Church - Popham Road, Scarsdale, New York 10583

(5) Scarsdale Congregational Church - 1 Heathcote Road, Scarsdale, New York 10583

1977:

Plaintiffs were aware that five churches had written to the Village Board in 1976 to offer their property on a rotating basis and that some of those sites might be available.

1978:

Plaintiffs were aware that five churches had written to the Village Board in 1976 to offer their property on a rotating basis and that some of those sites might be available.

1979:

Plaintiffs were aware that five churches had written to the Village Board in 1976 to offer their property on a rotating basis and that some of those sites might be available.

1980:

Plaintiffs were aware (1) that five churches had written to the Village Board in 1976 to offer their property on a rotating basis and that some of those sites might be available and (2) that a Mr. Gerry Conklin of 253 Mamaroneck Avenue, had written a letter to the Scarsdale Inquirer to offer his front lawn for the display of Plaintiffs' creche.

1981:

Plaintiffs received an offer from Mr. Roanld B. Durning to place the creche at 28 Chase Road.

Plaintiffs were aware that five churches had written to the Village Board in 1976 to offer their property on a rotating basis and that some of these sites might be available.

1982:

After Plaintiffs were denied permission to display the creche at Boniface Circle on December 2, 1982, Plaintiffs learned that Mr. Durning was offering the site of the former Frog Prince Proper Restaurant at 28 Chase Road.

Plaintiff Curran received a letter dated December 5, 1982 from the Scarsdale Congregational Church offering its property for the display of the creche.

Plaintiff Joan Mann learned that her church, the Scarsdale Community Baptist Church, was offering the use of its property to the Committee.

Plaintiffs were aware that churches other than the Scarsdale Congregational Church and the Scarsdale Community Baptist Church had written to the Village Board in 1976 to offer their property on a rotating basis and that some of those sites might be available.

1983:

Plaintiffs are aware that the Scarsdale Congregational Church's 1982 offer stated: "This offer is made unconditionally for this year only, or permanently, as desired."

Plaintiffs are aware that churches other than the Scarsdale Congregational Church had written to the Village Board in 1976 to offer their property on a rotating basis and that some of those sites might be available.

Interrogatory No. 4

4. If any sites were identified in response to interrogatory 3, please state whether the offer was accepted, and if it was refused, state the reasons for the refusal.

Answer

1976-1980:

Plaintiffs declined to accept the offers identified in response to interrogatory 3 in the years indicated for the following several reasons:

(1) None of the sites were located in the center of the Village of Scarsdale except for the Scarsdale Community Baptist Church. The size and landscaping of the Scarsdale Community Baptist Church's property are such that the creche's display at that location is limited to a side street where the creche would not be sufficiently noticed or appreciated.

(2) Plaintiffs did not wish to display the creche on any individual church's property because the creche was commissioned for display as an ecumenical project. In addition to the fact that the creche would not be sufficiently noticed or appreciated on the property of the Scarsdale Community Baptist Church, Plaintiffs did not wish to display the creche there annually because Plaintiffs did not wish the creche to be identified in viewers' minds as that particular church's creche.

(3) It was not possible to place the creche on some of the sites because the topography was unsuitable; the creche needs to be erected on a flat surface.

(4) Several of the locations were inadequate because the creche would only be viewed from cars passing by; Plaintiffs wished to display their creche at a location where pedestrians who so desired could stop and admire the creche.

(5) Several of the churches which made offers already displayed their own creches; Plaintiffs believed that the communicative impact of their display would be diminshed if such duplication were to occur.

1981:

Plaintiffs accepted Mr. Durning's offer.

Plaintiffs declined to accept the churches' 1976 offer in the year indicated for the same five reasons identified above for the years 1976-1980.

1982:

After Plaintiffs were denied permission to display the creche at Boniface Circle, Plaintiffs decided not to erect the creche.

1983:

Plaintiffs have not accepted or declined any offer in the year indicated to date.

Interrogatory No. 5

5. Please state the facts upon which the allegations contained in paragraph 11 of the complaint that the United Way, the Red Cross and the Association of Foreign Students were granted use of Chase Park or Boniface Circle were based. Include the dates, the sites, the purpose and duration of such usage.

Answer

The United Way

Plaintiffs' allegation in Paragraph 11 of the complaint that the United Way was permitted access to and use of either Chase Park or Boniface Circle was based upon statements contained in the minutes of the Village Board's November 23, 1982 meeting. The minutes of the Village Board's October 10, 1961 meeting reveal that the Board unanimously granted permission to the Scarsdale Community Fund (rather than the United Way) to erect a facsimile of a rocketship in the